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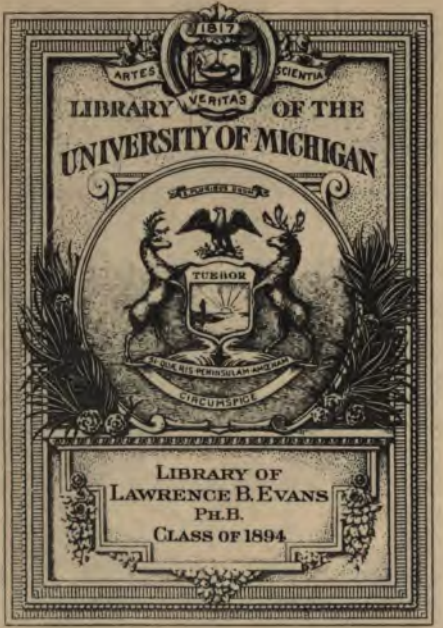

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Laurence B. Evans
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Winchester June 7-1913

Columbia University Lectures

THE BUSINESS OF CONGRESS

GEORGE BLUMENTHAL FOUNDATION

1909

COLUMBIA
UNIVERSITY PRESS
SALES AGENTS
NEW YORK:
LEMCKE & BUECHNER
30-32 West 27th Street
LONDON:
HENRY FROWDE
Amen Corner, E.C.
TORONTO:
HENRY FROWDE
25 Richmond St., W.

COLUMBIA UNIVERSITY LECTURES

THE BUSINESS OF CONGRESS

BY

SAMUEL W. McCALL

MEMBER OF CONGRESS FROM MASSACHUSETTS

New York

THE COLUMBIA UNIVERSITY PRESS

1911

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Set up and electrotyped. Published May, 1911.

Norwood Press
J. S. Cushing Co. — Berwick & Smith Co.
Norwood, Mass., U.S.A.

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PREFACE

In the winter of 1908–1909 I delivered a course of eight lectures at Columbia University on the Business of Congress, and, somewhat revised, they are presented in this volume. It was my chief purpose to portray the important processes of legislation, avoiding, however, the technicality essential in a parliamentary manual; to present the reasons underlying them, and to give a study in government with Congress as the central theme. The time when the lectures were given must be borne in mind in order fully to understand the allusions to political conditions, as well as to the rules of procedure. I have, however, referred in foot-notes to the important changes in the rules made prior to the Congress which has just convened.

For many helpful suggestions I am under very great obligation to the Hon. Asher C. Hinds, member of Congress from Maine, who is unequaled as an authority upon the rules and precedents of the House. I wish also to thank my friend, Mr. W. B. Parker, for a very careful reading of the proofs.

SAMUEL W. McCALL.

Washington, April 12, 1911.

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THE BUSINESS OF CONGRESS

CHAPTER I

General Functions of Congress

In attempting to perform the work which I have undertaken, I shall first endeavor to give some notion of its general scope. I shall try to outline briefly the place of Congress in our system of government and speak very generally of its powers and of the special powers of each of its two Houses, treating it as a political mechanism, a practical organ of government, playing sometimes a greater and sometimes a lesser part than that assigned to it by the Constitution. I shall consider more minutely the character of its business, the way in which it is transacted, the committees which study particular measures and report upon them to their respective Houses, and the development and nature of the power of the Speaker. I shall consider also the conduct of debate and the growth of obstruction which was the prime cause in bringing about its limitation, and the order of business which fixes the method of selecting the necessary and important matters from the great mass of measures introduced, a large proportion of which cannot be considered for lack of time and some of which it may be deemed best to shelve for political considerations.

I shall concern myself in doing this less with the history and development of procedure than with the

procedure itself, dwelling upon that portion of its past which will enable us the better to understand what it now is. It shall be my primary aim to show how the nation, through its chosen representatives, gives expression to its will and how it enacts laws for its own government and in some instances not happily, as some of us believe, for the government of other peoples. I shall not concern myself with many of the minor details of procedure, with the priority of ordinary motions, or with many of the technical steps which are set forth in the parliamentary manuals, but shall deem myself fortunate if I shall be able to explain its vital and essential processes. It will be important also to point out the practical manner in which the legislative and executive departments, theoretically separate and independent, are made to work to an extent harmoniously together so that there may be the requisite degree of unity in our system, that the nation may speak finally with a single voice, and that there may be that definite party responsibility for legislative and administrative action so necessary in a representative government.

Our problem has been to make a somewhat hard and fast political organism adapt itself to the changing conditions and the infinite complexities of society, a problem which on the whole has been very successfully solved. Our fathers aimed to reduce all that concerned their government to writing, and, after they had set it in motion, they immediately fell to disputing what their words meant. Whatever the advantages of a written Constitution, and it has some very decided advantages, they do not lie in the direction of the attractiveness they lend to exposition or in the invitation they give

to a light and picturesque style. To expound political scripture, to contend technically about the meaning of words, and to parse phrases, will ordinarily call into play neither philosophy nor the imagination, although the possession of the latter faculty can hardly be denied to some of our writers upon the Constitution. And when there is added to all this, in order to make a doubtful meaning clear, liberal quotation of judicial decisions, the lot of the ordinary reader becomes deplorable indeed. Unfortunately during a portion of my first talk I am compelled practically to illustrate the truth of what I have just been saying, by treating of the place of Congress in our system and sketching its constitutional powers. That part of my work shall at least be brief, and doubtless the things which I shall say will be very obvious things.

Congress is the law-making department of the government, and this function, in a government which is theoretically one of law, entitles it to preëminence under our system. It is the established organ by which the people are supposed to declare the policies that are to govern them. Congress, however, is itself subject to the higher law set forth in the Constitution. When it attempts to go outside of that instrument and pass legislation which is unauthorized or prohibited by its terms, it attempts to make our government not one of law, but in defiance of law, and such unauthorized or prohibited action is legally entitled to no greater authority than would be the same action taken by any mob in the streets. In such a case it is the function of the judiciary to protect the individual from the harmful effect of the usurpation of power and to declare it null and void.

The supreme and sole legislative authority of the nation is vested in the Congress. The people, directly through their representatives and indirectly through senators, chosen through the instrumentality of state legislatures, make the laws; the judiciary interprets them, and the President executes them. This in brief is the mechanism of our government. The chief cause of the Revolution, which in due time resulted in our Constitution, was the passage of laws, and especially of taxation laws, by a legislature in which the people of the colonies were unrepresented. Our fathers had perhaps an exaggerated notion of the importance of representation in a parliamentary body. It may be due to this circumstance that the first government established by them contained but a single department and was wholly the government of a Congress. The prime faults of that government did not grow out of its method of expression, but were due to the fact that it was a fundamentally weak government, possessing few really important powers. The Articles of Confederation did not confer sufficient authority upon the central government and left it at the mercy of the discordant policies of the States. The Constitution remedied this defect by endowing the central government with definite and important powers, and made it supreme within its sphere over the state agencies. But unless we are to suppose that the architects of the Constitution wasted their efforts upon side issues, they clearly designed a government of which the great central department was the Congress. That is the first department set forth in the Constitution. Three-fourths of that instrument is taken up with defining the composition of

Congress, enumerating its powers, and establishing restraints upon its action. Aside from the greater certainty and the greater extent of the grant of powers to the central government and the creation of a constitutional court, the important difference between the Articles of the Confederation and the Constitution is found in the circumstance that the latter established an executive separate and apart from the law-making authority, except with a limited power of veto. As the legislative power was by the first article vested in Congress subject to the veto, so by the second article the executive power was vested in the President. But even the executive functions are to an extent divided. Congress may by law vest the appointment of such inferior officers, as it may deem proper, in some other agency than the President. This provision of the Constitution could be made to cover the vastly greater number of executive offices. Very important functions are exercised by the President only by and with the advice and consent of the Senate. Congress wields the legislative sovereignty of the nation, and from the very nature of that function, and with the important powers also exercised separately by the two Houses, it becomes, as the courts have termed it, the political department of the government.

There has been, however, a claim asserted on behalf of the treaty-making power which, if well founded, would make it necessary to qualify seriously what I have just been saying. This claim would lead us to question whether Congress is the sole legislative organ of the nation, and to inquire whether it was not the purpose of the Constitution to create two law-making

agencies — the one composed of the representatives of the people and the Senate, subject to the veto of the President, and the other made up of the President and the Senate and any real or nominal foreign power taking the place of the representatives of the people. This question would seem a somewhat idle one, were it not for the fact that claims of so sweeping a character have occasionally been put forth from the very beginning of the government, concerning the scope of the treaty-making power, that they make it necessary to ask it. The issue involved is certainly an important one, and will justify a more than cursory examination. It will be well, therefore, to consider briefly the true scope of the treaty-making power as compared with the legislative power, so far as the assertion of legislative authority in the former is concerned.

The Constitution, with great particularity, established the mechanism of the central government, and then, as that government must of necessity have relations with foreign states, it conferred upon the President in a few words the power to make treaties by and with the advice and consent of two-thirds of the Senate. The sixth article of the Constitution then provided that "this Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding." It has been contended by some eminent men that it followed from

this article that there were two methods of making laws, — one by the Congress and the other by the treaty-making power, and that the laws made in either way were of equal validity; and even that those made by Congress were subject to the limitations of the Constitution, to which those made by treaty need not conform. The conflict began during the administration of President Washington. Chief Justice Oliver Ellsworth, at the time of the controversy over the Jay treaty, uttered a very sweeping dictum. He gave it as his opinion, but not in a judicial proceeding, that "the instant the President and the Senate have made a treaty, the Constitution makes it the law of the land, and of course all persons or bodies in whatever station or department within the jurisdiction of the United States are bound to conform their actions and proceedings to it. Such a treaty *ipso facto* repeals all existing laws so far as they interfere with it . . . but on the other hand a treaty cannot be repealed or annulled by statute."

This opinion, it will be observed, would emphatically make the treaty-making power the supreme legislature and treaties the paramount law of the land, repealing all inconsistent laws of Congress and not at all subject to repeal by the regular law-making authority so carefully carved out by the Constitution. Attorney-General Charles Lee at the same time expressed the opinion that "it is manifest that if a treaty contains any stipulations inconsistent with acts of the legislature, it supersedes them. If a nation has a law and makes a treaty by which it is agreed that the law shall thereafter cease, it exercises the power which it hath to repeal its

own laws." Some have even gone so far, as I have just stated, as to contend that the power to legislate by treaty was more untrammeled than action by Congress, for many limitations are imposed expressly upon the latter, while the former power appears to be without any express limitation whatever. From this extreme construction it would follow that the framers of the Constitution had such a profound distrust of the people, as to provide that when they were acting through their Representatives there should be important limitations upon them and upon the Senators as well, but when their Representatives were dispensed with, the limitations might safely be dispensed with also, provided some foreign potentate should sanction what might be done. It would thus appear that it was not so much jealousy of governmental power, as jealousy of the people, that animated the framers of the Constitution. Thus, for instance, while Congress might not establish a state church or abridge the freedom of speech or of the press, the President and two-thirds of the Senate and a foreign power might do those things which in terms are only prohibited to Congress. It is a little startling to contemplate some of the possibilities, if this view were to prevail, but, as it has been put forth by some eminent gentlemen, I do not feel at liberty to ignore it entirely in considering the place of Congress in our system of government.

Let us look first at the constitutional result of this theory. The claim would require us to believe that the framers proceeded with great care and elaboration in creating Congress, carefully debating its structure and each power that was conferred, appearing to give it

great sovereign powers, cautiously putting limitations upon it, devoting to it the greater part of the Constitution and of the time of the deliberations of the convention, offsetting in part the equal power in the Senate of the small and great States with special powers in the House, where the States were represented according to population, and that then in two brief lines they created, subject to no express restraint, a mechanism for making laws in which the representatives of the people were to have no share, and substituted for the Congress thus laboriously constructed a legislative machine composed of the President, two-thirds of the Senate, and some foreign power. The constitutional basis of this remarkable contention is found in a very literal interpretation of a portion only of the sixth article which is then detached from nearly all the remainder of the Constitution, a method which has sometimes been employed by theologians in interpreting passages of the Scripture. It is pointed out that this article makes all treaties the supreme law of the land, and that therefore treaties are laws, and it is to be noted that there is no requirement expressed, that they shall be in pursuance of the Constitution, as there is in the case of other laws. This latter circumstance, in all its extent and with all its startling consequences, might well lead one to question whether it was really intended to establish two legislative agencies — the elaborate and carefully constructed one with limitations, and the two-line structure without limitations. But the moment one withdraws his attention from the words "treaties" and "supreme law" and permits it to be directed to the rest of the Constitution and to the proper scope of this article

as derived from its history, he will see that the framers did not impose any constitutional restraint upon this alleged law-making agency for the very good reason that they did not make it a law-making agency at all.

In support of what I have just said, note the implication in this very article, "the laws of the United States" and "all treaties made, or which shall be made." The implication is clear that "the laws of the United States" were something different from treaties. This is no mere chance or finical distinction, but it is also clearly made in that article which relates to the scope of the judicial power. "The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority." Here again there is the same differentiation between treaties and "the laws of the United States." If there were any room for doubt as to the substantial character of this distinction, we have only to turn to the beginning of the Constitution. After the majestic preamble reciting the general purposes of the work, the very first article declares that "all legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives." This declaration in the very forefront of a Constitution, admittedly creating a government only of granted powers, that all legislative powers therein granted are vested in a Congress, not merely gives emphasis to the clear distinction, to which I have called attention, between treaties and "the laws of the United States," but it effectively disposes of the contention that the Constitution set up two law-making machines.

If there still remains any room for doubt concerning the correctness of this conclusion, let us consider for a moment the development of the sixth article in the constitutional convention and its general scope. It would appear to be entirely superfluous, after establishing a Congress and endowing it with the powers of a national legislature, to declare that its laws enacted pursuant to the Constitution should have the force of law over the people under its jurisdiction. But when we consider that with the adoption of the Constitution the very unusual, if not unprecedented, result was accomplished of establishing two governmental jurisdictions, which should each exercise sovereign powers and hold sway over the same territory at the same time, we shall see the propriety of, and indeed the necessity for, a declaration fixing the supremacy of the national organs of government within their constitutional sphere over the organs of the state governments. And that was the precise purpose of this very article. The relations of the government of the Confederation and the state governments to each other had been marked by constant bickerings and strife. Sometimes the States would submit to the central government, but often they would not. Some of them even attempted to put their own separate construction upon the treaty of peace, — a proceeding fraught with great danger to all the States. In March of the very year in which the convention was held, Congress passed a resolution declaring that the States had no authority to pass laws explaining a national treaty or retarding its operation, but that such treaties were binding and obligatory upon the state legislatures.

The idea was intolerable that thirteen different governments should assume to put separate and possibly contradictory constructions upon a treaty, made in the common interest by the central government. It was vital that the convention should deal with the relative authority of the state and the federal governments. The first form of the article, which was unanimously agreed to in the convention and referred to the Committee on Detail, provided that the acts of the federal legislature and the national treaties "shall be the supreme law of the respective States." This was subsequently reported by the Committee on Detail in a form which declared laws and treaties to be "the supreme laws of the several States and of their inhabitants and citizens." The article was again amended by the convention, which added the Constitution to the laws and treaties, but left unchanged the application of the article to the States. It was again considered by the convention, but was left unchanged in the respect to which I have referred, and it remained unchanged in that regard until the convention had finished its work of drawing the lines of the Constitution and framing its particular provisions, when it was referred with the rest of the Constitution to the Committee on Style for the purpose of perfecting the phraseology. The present form of the article appeared for the first time in the report of the Committee on Style shortly before the adjournment of the convention, and there was no word of discussion as to the change in language.

This development makes clear the purpose of the framers and explains the limited character of the injunction with which the article concludes, that "the

judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding." It was their prime purpose in this article to declare that the Constitution and the treaties and the constitutionally enacted laws of the central government should be supreme over state laws and state constitutions and should have force in the state courts of justice. But even if we are to separate the article from the story of its evolution, it would mean with regard to treaties merely that they were to have the force of laws; that is, that they were to be binding in character. And they would have such force even if the sixth article were not in the Constitution. A treaty, as Jay well said in one of the Federalist papers, is "a trade between nations," and when such a trade is made by the constitutionally ordained agents, it needs no sanction to add to the strength of its obligation. As Hamilton very wisely said of a treaty: "It has the force of law, but it derives it from the obligation of good faith."

But whatever force the article may add to the binding character of our international contracts, it is clear from the whole Constitution that the power to make laws for the government of the American people is confided indisputably to the Congress of the United States and to it alone. It is not material to my purpose to consider the scope of the treaty-making power, except as it may affect or involve the authority of Congress. The position of the House of Representatives, with regard to the Jay treaty in Washington's administration, was taken with remarkably good judgment. The House at that time declared that the

House of Representatives "does not claim any agency in making treaties, but when a treaty stipulates requirements on any of the subjects submitted to the power of Congress, it must depend upon its execution as to such stipulations on a law or laws to be passed by Congress." A recent law writer of repute, who, I think, shows a disposition to widen the domain of the treaty-making power, declares that the position of the House to which I have referred "has finally been definitely accepted by all the departments of the government." Chief Justice Marshall said in 1829 that when either of the parties to a treaty engages to perform a particular act, "the treaty addresses itself to the political, not to the judicial, department, and the legislature must execute the contract before it can become a rule for the court." Justice McLean said with regard to a treaty stipulation to pay money that "every foreign government may be presumed to know that, so far as a treaty stipulates to pay money, the legislative sanction is required." The act of Congress relating to the Alaskan purchase, passed, of course, by both the Senate and House and approved by the President, contained a preamble to the appropriation declaring that the stipulations of the treaty, providing for the payment of money, admitting certain persons to citizenship and accepting the cession, could not be carried into full effect except by legislation to which the consent of both Houses was necessary. That very brilliant lawyer, Rufus Choate, when a member of the Senate in 1844, in reporting from the Committee on Foreign Relations against the ratification of a treaty which dealt with customs duties, said: "The committee believes that the

general rule of our system is indisputably that the control of trade and the function of taxing belong without abridgment or participation to Congress. They infer this from the language of the Constitution, from the nature and principles of our government, from the theory of republican liberty itself, from the unvaried practice evidencing the universal belief of all."

And this very question of raising revenue affords a good test to apply to the claim of omnipotence in the treaty-making power. The framers of the Constitution attempted to recognize the peculiar relation of the taxing power to popular freedom, by giving the representatives of the people the sole power to originate revenue bills. That was the great compromise of the Constitution between the rights of the incorporations called States and the rights of the people. And yet the sweeping claim on behalf of the treaty-making power would require us to believe that the share of the people in this hard-won compromise was inconsiderately taken away, and that not only might taxes be levied which did not originate in the House, but that they might be levied without any participation whatever by the representatives of the people, if only the consent of some foreign power might be obtained, the consent even of that one against whom they had successfully asserted in war the principle, that taxation without representation is tyranny. Contrary to the opinion of Chief Justice Ellsworth which I have cited, Congress has repealed treaties, and the courts have held that it possessed that power.

This conclusion with regard to the relation of Congress to the treaty-making power seems to me to be

clear. When a treaty is not self-operative in its terms, or where it trenches upon some subject confided by the Constitution to Congress, the passage of a law is necessary in order to give it effect. Congress has usually supplied the legislation necessary to give effect and vitality to treaties, but sometimes it has not, and the power to pass laws making them vital, or to refuse to pass laws for such a purpose, is equally within its sovereign legislative discretion. This seems to be the rule in other nations. The power to make treaties is a power of the sovereign in Great Britain, but if a treaty calls for an appropriation of money, that appropriation cannot be made without an act of Parliament. And more than one treaty has been permitted to lapse because the requisite legislation was not passed. The necessary laws commonly are passed, but it is entirely within the province of the legislature to decide whether they shall be enacted or not. This does not impair the efficiency of the government, nor does it violate its faith with foreign nations. Those nations have notice of the distribution of the powers of another government and certainly of one with a written constitution. In the case of a contract which involves the payment of money by this nation, they have notice that the raising and the expenditure of money would first require the action of that organ of government having jurisdiction, before it could finally be operative. I shall therefore proceed in what I shall say on the theory that all the legislative power of the national government is vested in the Congress of the United States, as the Constitution declares in the first article, and I shall now recall to you an enumeration of its more important powers.

Congress possesses all the legislative authority that those who made the Constitution saw fit to grant to any agency. Not to enumerate all its functions, it has the power to lay and collect taxes and uniform duties, imposts, and excises; to pay the debts and provide for the common defense and general welfare of the United States; to borrow money; to regulate interstate and foreign commerce; to establish uniform bankruptcy laws and a uniform rule of naturalization; to coin money and regulate its value; to establish post-offices and post-roads; to pass patent and copyright laws; to constitute inferior courts; to define and punish piracies and felonies committed on the high seas, and offenses against the law of nations; to declare war, to raise and support armies and navies, and to make rules for their government; and to make all laws necessary and proper for carrying into execution the granted powers and all powers vested by the Constitution in the government of the United States or in any of its departments or officers. These powers are subject to certain specific limitations, for the framers with their reverence for individual freedom sought to protect the individual even against the government which they were establishing. They prohibited those things which they especially associated with tyranny. The writ of *habeas corpus* must not be suspended, except when in case of rebellion or invasion the public safety requires it. Among the things prohibited are *ex post facto* laws and bills of attainder, laws establishing religion or prohibiting the free exercise thereof, abridging the freedom of speech or of the press, or the right of the people peaceably to assemble and to petition the govern-

ment for a redress of grievances, or the quartering of soldiers in time of peace in any house without the consent of the owner, or in time of war except as prescribed by law, or that one should be compelled in a criminal case to testify against himself, or be deprived of his life, liberty, and property without due process of law. The powers granted are sovereign and majestic in their character and are themselves conclusive upon the place assigned to Congress; the limitations are of the very essence of liberty, and comprehend the fruits of nearly every great victory won for freedom in other lands. The framers also imposed limitations in certain particulars, in which they wished to preserve the authority of the States and as well to prevent encroachments by the States upon the federal government. They thus created a government clothed with ample power to maintain itself both against foreign and domestic enemies, with jurisdiction over all matters of legitimate common concern and as definitely guarded against undue centralization, by reserving to the States and to the people all powers not granted to the central government.

A distinctive thing about our system, which must be kept in mind in comparing its operation with that of other systems, is the species of isolation with which the Constitution clothes our separate departments. Our governmental powers are distributed among the three great departments which are independent of one another, although a way is provided in which the President may communicate with Congress recommending legislation, and the power is given him to veto measures of which he does not approve; and the Senate

possesses important functions of an executive character. This distribution of powers, especially those of a legislative and of an executive character, is somewhat exceptional. In England, for instance, these powers, while they might in the past have been exercised separate and apart, are now practically blended. The King has shrunk to the proportions of an ornamental figurehead. The men holding the general offices of administration are upon the floor of one or the other of the legislative chambers, and they take the responsible initiative in important legislation. Executive and legislative powers are thus practically exercised by the same men, and they wield the administrative authority so long as they can command the support of the majority of the House of Commons. There the governmental powers are concentrated; here they are distributed. The advantage of concentration is supposed to be efficiency, and it certainly affords a method for quick action and a ready means for locating responsibility. The advantage of distribution is in the direction of caution and safety.

Very much has been written about the relative merits of the two systems. Whether some modification of the British system would work better among us than does our own is a question upon which I shall speak more at length hereafter. But conditions in the two countries are fundamentally different. Great Britain is small in area and its population is to a great extent homogeneous. A man of fair intelligence is able at least superficially to survey the whole field. Public opinion is formed chiefly by the same body of newspapers, so far as newspapers now really form opinion,

and the differences, that come about in opinion, are usually such as occur among men upon the same spot, breathing the same political atmosphere, and subjected in a great degree to the same general influences. There is thus a genuine national division, at least throughout the far greater part of the country, upon questions of any considerable importance. But in a vast country like ours there is often a distinct opinion, which grows up in one locality and does not extend to other localities. One community as a whole is subject to influences that another community knows little or nothing about. We thus have groups of opinions, sometimes contradictory, in which case they are apt to neutralize each other, and sometimes entirely independent, upon some question upon which the general mass is not at all stirred, in which event, if they are held by a powerful section, they may lead to national action. It is well at such times that the machine should not be too easily worked. Then the rapidity of our physical development and the transformation of the face of the country have accustomed the minds of men to startling changes. Until a new and fast-expanding society has found itself, and while it is lacking in long-established political and social institutions and in that conservative deference which time is necessary to produce toward the institutions which it has, it needs those restraints upon hasty action which are found in a somewhat complex mechanism of government, which is not instantly responsive to a prevalent mood, and may not therefore easily become a mere weather-vane.

7 Some foreign critics, who do not always exhibit a profound practical knowledge of the operation of our

system, endow us with virtues, to which we have by no means the strongest claim, in order to offset faults in our governmental machinery which do not exist. Mr. Walter Bagehot, in his brilliant book on the English Constitution, says of Americans that "if they had not a genius for politics; if they had not a moderation in action singularly curious where superficial speech is so violent; if they had not a regard for law, such as no great people have yet evinced, and infinitely surpassing ours, — the multiplicity of authorities in the American Constitution would long ago have brought it to a bad end." The very multiplicity of governmental organs, or rather the division of powers, of which Mr. Bagehot does not approve, has helped make the contrast, to which he refers, between violent speech and moderate action. If all the governmental energy of the state should be concentrated in a single organ of government so that it could act on the instant upon any matter about which all the public was excited, or a portion of the public was excited and the remainder indifferent, and if the restraints of a written Constitution should be removed from legislative action, we should have results in law that it would not be agreeable to contemplate, and statutes would multiply at a frightful cost to liberty. If, for instance, the bewildering wealth of reforms recommended in a single message, sent to Congress in the not remote past, should be embodied in law at a single session, a pace would be struck which would in a short time bring about a statutory millennium, where everybody would be made perfect by penal enactment and our law-making bodies could be abolished, — a result all good citizens would then devoutly hope for,

except for purposes of repeal. There is some ground for the claim that our statute books show that we move quite rapidly enough and that with all the checks against hasty action, with all the constitutional expedients to secure matured and well-seasoned policies, and with all the division of powers, quite enough crude, adventurous, and extemporized reforms are entered upon.

In a crisis our departments do not work at cross-purposes, but they are likely to coöperate harmoniously together, and the republic does not lack for concerted action. The recent history of England will show, notwithstanding the apparent concentration of authority even, when she has "a newly elected House of Commons," which Mr. Bagehot calls the ultimate authority in the English Constitution, that her governmental organs are sometimes clashing and antagonistic. The House of Commons of the present Parliament* is engaged in passing legislation of a political character, which the House of Lords is also engaged in treating with very great disrespect. And the same thing was true of so important a policy as Home Rule, upon which Governments had gone in and had gone out, and which was finally passed through a House of Commons chosen upon that very issue and was then unceremoniously rejected by the Lords. As against a House of Commons where the majority is not large, the House of Lords may upon a great occasion prove a decisive check.

This distribution of powers which we have takes from the proceedings of our two Houses of Congress something of the dramatic interest which belongs to

*1908.

the legislatures of other countries. A parliamentary struggle upon great questions here and in Great Britain differs as an engagement differs from a general battle. There the governmental control of the country often hangs upon the vote. The money is all on the table. A group of members enter the session of the House as mere fighting members of the minority, and may go out after the division practically summoned by the result of the vote to conduct the government of the country. The greater size of the stake augments the interest in the game. Here either or both of the Houses may vote against a measure desired by an administration, and yet no Cabinet goes out of office, nor is there a new election. It seems to disturb the critics that there must be some delay, and that the passion of the people must stay corked and pent up for a time. But who shall say that their judgment will be the worse, when finally expressed, because they have had a little opportunity for reflection? And if, before action has been taken, what seemed to be popular opinion upon a particular subject has been shown to be a temporary passion and has subsided and been forgotten, the evil brood of unnecessary laws has been kept smaller and society has escaped some galling fetters which a transient impulse would have imposed.

The President serves out his term and the members of Congress remain in their offices during the appointed constitutional period. But, nevertheless, with us the partisan struggle is constant, and, although an appeal cannot usually be taken to the country upon a single policy, all parties are accumulating material for the regular periodical appeal that must be made, and the

effort to make the accumulation as large as possible stimulates partisan activity. Whatever the unfavorable results of this activity may be, it serves on the whole to maintain interest in the proceedings of the two Houses, even if very much of the current froth and fustian shall have evaporated and passed off into space when the time for voting finally comes.

There is greater coherency in the action of our legislative and executive departments than might be inferred from some writers of authority. While there is room for individual initiative, the rules and practice and the general development of our system have measurably imposed restraint upon the individual, as I shall hereafter show, and have brought about a definite party responsibility. While there is no legal inequality among members, there is a great inequality among measures, an inequality created by rules, which are themselves the outcome of necessity and which give the right of way to those matters of business especially related to the efficiency of the government; and a further inequality created from time to time by the special action of the majority. There is little haphazard action so far as those policies are concerned which the majority deem really important, and there are constitutional ways in which the executive and the majority of each House, although belonging to different departments, may take each other fully into their confidence and act towards a common end.

The accomplished clerk of the British House of Commons, Sir Courtenay Ilbert, has said that the business of the House of Commons is legislative, financial, and critical, of which the legislative function is not the

most important, and that it is not a governing body. In the sense that it does not directly administer laws, this is true; but if, as Macaulay says, the Cabinet consists exclusively of statesmen whose opinions on the pressing questions of the time agree in the main with the opinion of a majority of the House of Commons, then it would follow that the House of Commons is, in the highest sense, a governing body. The Government must do in the long run just what the House of Commons persistently wishes, and that body, therefore, governs the governors. With us, there is a definite allotment of powers among the legislative, executive, and judicial departments of the government, the last two departments having a species of responsibility to the legislative department, and also to the separate Houses. Our Congress, as a congress, possesses only legislative powers, but the two Houses separately, as I have said, possess powers of a different character. The House of Representatives has the sole power of impeachment, and this, taken in connection with its power to originate all tax bills to raise money for paying salaries of officers and conducting the government, would imply that it has constantly to scrutinize the conduct of those officers and bring impeachment proceedings in cases where they are guilty of serious faults or rather crimes. It is thus put in a critical attitude, which is that of the House of Commons with reference to administration.

Upon the Senate is conferred the judicial power of trying impeachments, so that to the Senate and House, but not merely in their capacity as legislative bodies, all public officers are responsible for the manner in which

they discharge their duties, and it is at least within the power of a majority of the House and two-thirds of the Senate to depose any officer of the government from the President down. The Senate possesses further important powers of an executive character and must ratify all treaties and confirm appointments to office, while the House, in case of the failure of any candidate for the presidency to receive a majority of all the votes in the electoral college, has the power of electing a president. The two Houses together and separately possess, to employ the division of Sir Courtenay Ilbert, critical powers of a most important character.

As legislative bodies, the powers of the Senate and of the House are equal with an important exception. All bills for the raising of revenue must originate with the House of Representatives. This, as I have said, was one of the important compromises of the Constitution. A minority of the States represented in the constitutional convention contained more than two-thirds of the entire population of the country, and some compensation was sought by these large States to offset the proposed equality of representation of all the States, large and small, in the Senate. If a small minority of the people, represented through their States in the Senate, were to exercise the powers of confirming appointments to office and ratifying treaties, the larger States insisted that the popular body should at least have some special power over revenue which was to be raised,—either directly from the States in proportion to population, or by indirect taxes that would fall upon individuals; and a compensation for the equal power of the smaller States in the Senate was given to the

larger ones by providing that the House should have the sole power to originate bills raising revenue.

In practice, this compensating power has been to a large extent nullified and reduced to a mere shadow. The Senate has freely exercised the power of amending tax bills. More than once it has struck out all after the enacting clause of a House bill and inserted measures of its own. The House has indifferently resisted the encroachments of the Senate, sometimes submitting but more frequently opposing them. It has as a rule asserted the right to originate bills imposing new taxes or repealing old ones, and influential members have contended that the power of the Senate to amend simply extended to the specific taxes which were presented to it in House bills, as, for instance, if the House should send to the Senate a bill imposing a tax upon coffee, the Senate's right of amendment would be limited to increasing or diminishing or rejecting the proposed tax, and it would not be at liberty to impose taxes upon other articles. This position was very strongly taken by Mr. Garfield. The Senate has sometimes contended that the right of the House applied only to bills raising revenue, and that the former body might originate bills which decreased the revenue or repealed taxes, and more often it has maintained the position that when the House sent up a tax bill relating to a given article, the Senate might strike out that article and insert another in its stead or insert any number of articles as well as change the amount of the tax. Like all important questions of prerogative between different departments of government, this is likely to be definitely settled, if at all, only by some determined struggle.

The body having the prerogative must assert it. It can scarcely expect to be taken under guardianship by another department like the Court, except in a glaring instance of invasion, and to have a right maintained by others which it is too weak to assert for itself. The position of the House as the direct representative of the people is very strongly in its favor as is also the inherent justice of the principle intended to be recognized in the Constitution: that the people who pay the taxes should have a special power in their imposition, and in the harmony of that principle with the spirit of our institutions. On the other hand, the shortness of the term of the members of the House compared with the much longer term of the senators, the rapidly changing membership of the former body, and the Senate's power over the patronage throughout the different districts would give great practical advantages to the Senate in a contest over the prerogative.

Not merely does the House frame revenue bills, but the settled practice to-day, by the concession of a disputed point by the Senate, is to treat the appropriation bills as money bills and trust their formation in the first instance to the House with the right of amendment to the Senate. Thus all bills not merely for "raising revenue," but for spending it, originate in the House.

Having thus outlined in a general way the power of Congress as a department of the government and the distinctive powers of each of the two Houses, I come to the question of procedure and the manner in which their business is transacted.

CHAPTER II

Source of Rules. Organization of the Two Houses

The history of our congressional procedure does not have its roots in a cloudy past as does the procedure of the House of Commons, and it possesses little of interest to the political antiquarian. The Houses are given by the Constitution the authority to frame rules, and these rules took as a starting-point the procedure of Parliament, which, as Mr. Jefferson said, was for a long time "crude, multiform, and embarrassing," but which attained "a degree of aptitude beyond which little is to be desired or expected."

The rules of the two Houses and the precedents of more than a century form the body of our parliamentary law. The procedure of the House of Representatives is much more complicated and technical than that of the Senate, and changes in the rules of the former body are of more frequent occurrence, due chiefly to the fact of its much larger membership. The size of the Senate, on the basis of the full representation of all the states, has gradually increased from twenty-six to ninety-two, while that of the House has grown from sixty-five to three hundred and ninety-one. This larger membership has made necessary in the House important invasions upon the right of the individual to speak and to

offer amendments, and it also has had an important effect in the development of a different order of business.

The individual freedom is retained to a great degree by the rules of the Senate, and in practice it has an admirable procedure, not unlike that of a board of directors, where things are done in an orderly manner, but not according to technicalities. The small size of the body is a most important factor in bringing about this condition of affairs. As legislative bodies increase in size, it becomes necessary, as in the case of increasing populations, to impose greater restraints upon individual action; and the ordinary course of business which might be followed in a body of limited numbers would become impossible of application in a larger assembly. The greater length of the senatorial term, which is six years, as compared with that of two years in the case of a member of the House, probably also contributes in a measure to make the procedure of the Senate what it is. In some cases the necessity of making a record in a very short term might lead to an insistence on the part of the member which would not be shown if he had a much longer period in which to produce results. The short interval between elections of members of the House makes them in a sense always candidates, and they are under a constant temptation to impress themselves upon their constituencies. With a greater incentive to individual action, therefore, in a body the number of which greatly reduces the part which each individual may play, there will be found to be a constant tugging against the fetters, which are imposed out of the necessity of transacting the business

of the assembly. It is inevitable, therefore, that there should be a much greater freedom of individual action in the Senate than in the House. The traditional dignity of the Senate, which is usually respected by its members, but sometimes notably infringed upon, also has an influence in determining its practice.

It is rare that there is a parliamentary tangle in the Senate, and the off-hand decision of the presiding officer is usually placidly accepted as the rule of procedure. It affords little field, therefore, for discourse upon procedure, and there are few points in its practice that cannot easily be solved simply by reading its rules. There is thus no reason nor excuse for any attempt at an elaborate treatment of its parliamentary methods, and on account of the much greater complexity of the practice of the House and its necessary departure from the simple parliamentary procedure, its precedents will occupy much the larger share of my attention.

The first Congress was able to avail itself of the experience of the Congress of the Confederation, of the British House of Commons, and of the colonial assemblies which had existed in some of the colonies and had been developing for more than a hundred years. The House of Representatives of the first Congress adopted its code of rules, and the Houses of the succeeding Congresses have usually proceeded upon the theory, that with each new Congress it was necessary for the House to adopt its own rules, although in 1860 a rule was passed making the rules then adopted "the rules of that and succeeding Congresses unless otherwise ordered." The validity of this proceeding was questioned in subsequent Houses, but the rule was acquiesced

in until 1890, when it was finally dropped from the code. Since that time the ancient practice of having each House of Representatives adopt its own rules has been followed. And by repeated reënactments the rules of the House of Representatives of the first Congress have come down to our time with omissions, additions, and amendments, that appeared from time to time to be necessary, and some of the rules of that House have continued in force with very little change to this day. The rules as they now stand represent a gradual development, and nearly every material change can be traced to the increase in membership, or amount of business, or to some other changed condition in the House. The most important single revision was that of 1860. The revision twenty years later dropped a number of rules that were practically obsolete, rearranged others, and added a few new ones. The only revision since the latter time, that of 1890, left nearly two-thirds of the rules untouched, and changed the remaining eighteen only in four important particulars — the counting of a quorum, the size of the quorum of the Committee of the Whole, the dilatory motion, and the order of business; so that the rules of to-day represent, as Mr. Dalzell says, "an evolution, the outgrowth of the parliamentary experiences, necessities, and exigencies of all the hundred years and more of our congressional life. The book of rules contains no rule that had not a reasonable necessity for its adoption in the first instance." I do not mean to assert that none of the rules in the code is lacking in wisdom, but that the rules as a mass are the work of no one man, and are the outgrowth of our parliamentary experience. This slow and gradual change

and approach to permanency give to the rulings of Speakers and of the Chairmen of the Committee of the Whole, and to the practice and customs of the House, a great value, and make especially true of the House the statement of Mr. John Sherman, made in 1896, that "precedents and customs are this day the chief law of both Houses of Congress."

Mr. Jefferson prepared a parliamentary manual for the use of the Senate over which he presided when Vice-President, and it has been accepted as authority also in the House since that time. In 1837 a rule was adopted, which still remains in force, providing that Jefferson's rules should govern the House in all cases in which they were applicable and were not inconsistent with the rules of the House. The manual is an excellent compendium of general parliamentary law, as it existed one hundred years ago, but it is not frequently referred to in the proceedings of the House.

When the first session of a Congress assembles, either on the day fixed by the Constitution, which is the first Monday in December, or upon some earlier day in the instances when it is convened in extraordinary session by the President, or by law, the Senate is an organized body, but the House of Representatives is not. At the ending of a Congress every two years, the terms of only one-third of the senators expire. There is always a quorum of that body actually in office. It has a presiding officer, a body of rules, a clerk, committees, and is theoretically ready to transact business. Thus the Senate when a new Congress comes together needs only the assembling of a quorum of its members in order to be prepared for work. At the beginning

of a presidential term, the constitutional presiding officer, the Vice-President, must qualify, but he has already been chosen by the electoral college. The vote has been canvassed and the result declared in the presence of the two Houses, and it only remains for him, upon the 4th of March, to take the oath of office, and even before that formality has been complied with, the Senate usually has a President *pro tempore* chosen by itself, who discharges all the duties of the chair when it is not occupied by the Vice-President.

On the other hand, the term of the entire membership of the House comes to an end at the conclusion of each Congress, at noon on the 4th of March of every odd-numbered year, although technically the journals of the two Houses show the 3rd of March to be the last day of a Congress. The moment after the expiration of a Congress, the House has no Speaker, no committees, no rules, no sworn membership, and no actual existence as an organized body. When a new Congress assembles, the members-elect are called to order by the Clerk of the preceding House. This action by the Clerk, however, is a matter of practice based upon a rule of the preceding House rather than upon law. The names of the members-elect are called from the roll bearing the names of those whose credentials in due form, filed with the Clerk, show that they were regularly elected according to the laws of their respective States and of the United States.

After the call of the roll, the business of the highest privilege is the election of the Speaker, although the unorganized House has sometimes exercised the right to correct the roll, when the election of the Speaker

was not first insisted upon. During the time of organization the Clerk also preserves order and decides questions of order subject to appeal. Many curious contests have arisen concerning the power of the Clerk as a presiding officer, and in at least one instance the members-elect, when dissatisfied with his conduct, chose one of their own number as their temporary chairman. But although the practice is based upon a rule of the preceding House, which technically is without force because it expired with the House which adopted it, it has become the settled procedure for the Clerk to exercise the authority conferred by the rule, sanctioned as the practice is by almost uninterrupted usage. The power is exercised in the presence of the body, which could in its discretion elect another presiding officer, and would naturally be little subject to abuse.

After the presence of the constitutional quorum has been shown by the call of the roll, the Clerk announces that fact and declares the next business in order to be the election of a Speaker. He then appoints four tellers, representing the different parties, and upon the calling of the roll each member announces his choice. One of the tellers reports the vote, and the Clerk declares the result. When it appears that any candidate has received a majority of all the votes cast, the Clerk appoints a committee of members-elect to wait upon the Speaker-elect and escort him to the chair. The oath of office is then administered to him usually by the member-elect of longest continuous service. After that formality, the Speaker in turn administers the oath to the members-elect, who thus become transformed into members. The Clerk is then chosen. The rules,

usually those of the preceding House, are then adopted, to remain in force until otherwise ordered, although, as in the Fifty-first Congress, the House may proceed under general parliamentary law until it shall adopt its own special code of rules. The House then is an organized body, and the Senate is informed that the former is ready to proceed to business, and a joint committee is appointed by the two Houses to wait upon the President and notify him that Congress is ready to receive any communication which he may be pleased to make. Such, in brief, is the procedure followed at the convening of a new Congress, by which it puts itself in readiness to discharge the public business. It will be seen that it is a very practical proceeding, with little of the ceremonial that attends the assembling of foreign parliaments.

Although the Senate is organized when the Congress assembles, it attempts no general legislative business until the House has been organized also, apparently upon the theory that there is no working Congress while one of the Houses is unorganized. It has, at a time when the organization of the House has been delayed by fruitless attempts to elect a Speaker, permitted a bill to be introduced and referred to a committee, and it commonly proceeds with its own executive business, in the transaction of which the House has no constitutional share.

The House is not prepared to do business until the oath has been administered to its members, or at least enough of them to make a quorum, and while it is the practice to administer it to all whose names are borne upon the Clerk's roll and whose credentials are in regular form,

yet often the admission of a member has been objected to, whose credentials were in proper form and whose name was upon the roll. When objection is made, even by one who has not yet taken the oath of office, the Speaker will not administer the oath to the member objected to until further action by the House. Immediately after the Civil War it was quite common to resist the swearing in of a member-elect on the ground of alleged disloyalty, and at times there have been other objections. In the case of Mr. Roberts in 1899, the objection was made that he was a polygamist. In the organization of the House it would appear to smack somewhat of presumption for one member-elect, awaiting the oath of office, to object to the administering of the oath to another member-elect, whose *prima facie* title was precisely as good as his own. Such a procedure would tend to produce chaos in an unorganized body. A proceeding of this character seems in principle to strike so directly at the right of a constituency to be represented by the man of its choice, that it will be well to scrutinize it somewhat carefully.

The most important case in the last half century where the House voted to exclude a member, admitted to be elected and having the constitutional qualifications, and to declare his seat vacant, was the one to which I have just referred, that of Mr. Roberts in the Fifty-sixth Congress. On December 4, 1899, while the members were being sworn in, Mr. Taylor of Ohio objected to the swearing in of Roberts. "I do so," he said, "on my responsibility as a member of the House." He then stated the grounds of his objection, the chief of which was that Roberts was a polygamist. At the

same time he presented memorials from over seven millions of men and women "protesting against the entrance into this House of the Representative-elect from Utah." The Speaker thereupon ordered Roberts to stand aside until the other members had been sworn in. A resolution was then introduced and adopted, referring the matter to a special committee to be appointed by the Speaker and forbidding the swearing in of Roberts until the committee should have reported and the House have decided upon the report. A majority of this committee ultimately reported that Roberts ought not to have a seat in the House and that his seat should be declared vacant. To accomplish this result only a majority vote of the House would be necessary.

The minority made a report to the effect that Roberts, having been duly elected and having the qualifications requisite for admission, was entitled as a constitutional right to take the oath of office, and that his status as a polygamist afforded ground, not for exclusion, but for expulsion, which would require a two-thirds vote. The report of the minority found that representation was a constitutional right. The majority held in effect that the House was a species of club to which constituencies had the right of nominating members, but with the power in the majority of the House to refuse admittance to any nominee, for any cause which they might deem sufficient. There was nothing said in the Constitution about limiting the right of a constituency to choose only those who were not polygamists. If the House might impose a new test of that character, it might equally well in its discretion

exclude a regularly elected representative who held any given political or religious belief, or who was personally unpopular outside of his own constituency, or who had red hair or any other physical peculiarity.

The action of the House in adopting the recommendation of the majority seemed to place representation upon the basis of a favor and not of a right, and serves to recall the famous Wilkes case in the British Parliament. The precedent would destroy the constitutional right of a State to representation. It is of the essence of our representative government that the constituency should be represented by the man of its choice within constitutional limits. It might choose a man who would not be approved by another constituency, but the other constituency might choose one who would not be approved by it. Upon the question of fitness each constituency is the final judge, provided the requirements of the Constitution are observed. That instrument provides that a Representative must be twenty-five years of age, seven years a citizen, and at the time of his election an inhabitant of the State in which he was chosen. The absence of any of these qualifications affects the constitutional right of his State to choose him, and may be the ground of objection, but in the presence of these qualifications, the only constitutional power of the House, by which a State might be deprived of its representation, would seem to be expulsion, which could be accomplished by a two-thirds vote, for any reason which the House might determine to be a good one. It is extremely unreasonable to suppose that the framers of the Constitution should think it necessary to confer expressly the power to expel a mem-

ber and require a two-thirds vote to do so, even where he might have been guilty of gross disorderly conduct in the presence of the House itself, and permit to be implied the power to exclude a member by a bare majority vote, whose *prima facie* title to a seat was beyond question and whose constitutional fitness was conceded.

A somewhat similar case arose in the Senate a few years later when an attempt was made to declare vacant the seat of a Senator, also from Utah. It was proposed in that case that the Senator should be declared disqualified, upon other than constitutional grounds, and excluded from the Senate by a bare majority vote. The Senate, however, very decisively refused to declare the seat vacant.

When the House is organized, as I have indicated, it is then prepared to do business in a limited way, but it is not practically equipped until its committees are announced. These committees are a species of miniature legislatures, to which, under the rules, all measures are referred in the first instance, although, of course, it must always be borne in mind that the House frequently dispenses with its rules by unanimous consent or by suspending them, and sometimes, although rarely, acts directly upon matters that have not been referred to committees. The committees are the organs of the House, charged with the duty of investigating questions referred to them. They are bi-partisan in their composition, and are made up of majority and minority members, with a comfortable working margin for the majority. They conduct hearings, make such investigations as they deem necessary, and, finally, when they have concluded the consideration of a measure, if they

decide to report it favorably, they perfect the bill or resolution and report it to the House, recommending its passage.

If they decide against a measure, it is usually not reported at all, but ends its existence in the committee. Sometimes, however, a measure is reported adversely, and the House, on consideration, may overrule the recommendation of its committee. It rarely does so, however. In certain privileged cases, a motion may be made in the House to discharge a committee from the further consideration of a measure and bring it before the House for immediate action. But generally the unfavorable action of a committee upon a bill is decisive against it. The power of committees to initiate or to stifle legislation is thus very great.*

The committees are named by the Speaker, and the first fortnight of the first session of a Congress is usually consumed in their selection. This task is perhaps the most difficult and important which the Speaker is called upon to perform. He is compelled to consider the claims of localities and of individual members, and much pressure is brought to bear upon him both from within the House and outside of it. He is interviewed and sometimes importuned by members individually, and is often inundated by petitions from organizations, great and small, throughout the country. State delegations frequently meet and indorse their members respectively for various places, and high political influence is sometimes brought to bear. As a rule, when there is no

* During the Sixty-first Congress a rule was adopted for discharging committees, but it was so sweeping and crude as to be practically unworkable.

change of party control, those who were members of the preceding House are given the preference, where they wish to have again the places they previously held, and they are also usually preferred to new members, where they desire appointment to some other committees than those of which they were formerly members. The present Speaker* made the task of selection much easier by adopting the practice of asking the minority leader to name the minority members for committee places, and he generally made appointments in accordance with such recommendations. The chief practical difficulty is found in placing the new members and in promoting old ones to important vacancies.

I shall defer for the time the further consideration of the committees and their work and proceed to the initial step of legislation, which must first be taken before the committees can become active. I refer to the introduction of bills.

* Joseph G. Cannon.

CHAPTER III

Introduction of Bills. The Committees

Bills are introduced in enormous numbers on the opening day of a session of Congress and are referred to appropriate committees, although the membership of the latter has not been announced, and no progress can be made with their consideration until after the personnel of the committees has been decided upon. The clerk of the British House of Commons uses the method of introducing a bill to illustrate how the historic procedure of the House of Commons had been compressed, so that forms are complied with in an instant of time which formerly required days and even weeks. Speaking of the practice which invariably obtained down to 1902, and is still sometimes observed, he says that "the Speaker puts the question that leave be given to introduce the bill and unless, as rarely happens, the motion is opposed, proceeds to ask who will prepare and bring in the bill. The member in charge replies with a list of names including his own, and then goes down to the bar of the House and returns to his place with a paper which is supposed to be the bill, but is actually a dummy, which he formally hands in." The forms are now gone through with in a few seconds, where formerly there was first a debate on some alleged evil and on the question whether it required legisla-

tion, and then there might follow the selection of a small body of members with some one as spokesman. "It was this spokesman who subsequently moved for leave to introduce a bill, and named his colleagues in response to the Speaker's question, and when he went down to the bar it was not for the purpose of immediately returning, but for the purpose of retiring with his colleagues to some suitable place" to deliberate and prepare the bill.

In the present practice of the House of Representatives a member prepares his bill, puts his name upon it, and places it in the "box" at the Clerk's desk. If it is a private bill or memorial, the member writes upon it the name of the committee to which it is referable, and other bills, public in nature, are referred by the Speaker to the committee to which the rules give jurisdiction. This simple procedure is the slow outgrowth from a process very similar to that in the British House to which I have referred.

In the early history of our national House, bills were introduced on leave, when they were introduced at all by the member, but it was the more common practice for the committees, to which a petition had been referred, or which had been instructed by a resolution of the House to do so, to prepare the appropriate bill. After forty years of this latter practice, it became much more common to introduce a bill on leave, and the question whether leave should be given was sometimes the subject of a long debate. The practice of the House had grown much more liberal by 1880, and the rules at that time were changed so as to provide a call of states each Monday morning for the introduction, without leave

or notice, of bills, joint resolutions, and memorials. In 1890 the present form of the rule was adopted.

As there is now practically no limitation upon the introduction of bills, excepting that imposed by the degree of industry or forbearance of members, the number of bills has been enormously increased, and the importance attaching to the introduction of a given measure has correspondingly declined. During the first session of the present Congress,* twenty-three thousand bills were introduced, only a small proportion of which could by any possibility be considered. The liberality of the present method is frequently taken advantage of, so that all sorts of Utopian measures are presented for reconstructing the entire state, according to the notions prevailing in some particular constituency or in some particular member's mind.

The present system has its obvious advantages and disadvantages. It affords an easy method for presenting matters of real importance, and it saves time in the introduction of business, but it permits without hindrance the bringing forward of all sorts of "half-baked" measures and sensational bills, which are sometimes published widespread throughout the country and excite unnecessary alarm among those who take them seriously and who would be especially affected by the proposed legislation.

Under the rules, all bills, resolutions, and memorials are referred to the standing committees. These are some sixty in number in the House of Representatives, but they differ greatly in importance, according to the

* The Sixtieth.

nature of their jurisdiction and the amount of work which they are required to do. The temporary prominence of some particular issue in politics will impart a transient importance to a given committee, which importance may be lost with a change of political conditions. The Committee on Coinage, Weights, and Measures, for instance, possessed in the early part of the last decade of the nineteenth century a great prominence, when the so-called silver question was uppermost in Congress, and when Mr. Richard Bland was its chairman, but during the last ten years, with the subsidence of that issue, it has had practically nothing to do with proposed legislation that finally passed or that was at all connected with current politics, unless we except the measure to restore "In God We Trust" to the coinage.

It is sometimes said of the House that it has as many leaders as it has chairmen of committees. But as it is unusual for more than half of the sixty committees to have bills before the House, the number of leaders, according to this definition, is very much reduced. And again it must be borne in mind that many of these bills are of minor consequence, are entirely non-political, and such as those for which a government in Great Britain would not assume responsibility. They are much like the measures in Parliament which are brought forward by private members, and, if one of the so-called leaders in charge of such a measure fails to convince the House of its wisdom, there is no consequence remotely analogous to what would happen, if a leader under a parliamentary system were voted down. The really political, or what may be called "government"

bills, in the House of Representatives, come under the control probably of no greater number of men than are usually found among the members of a ministry in the House of Commons, and the really political bills that are brought forward, it may be added, almost invariably command a majority of the House.

The chief work of the House is transacted in the first instance by fewer than a dozen committees, although at times a half dozen more may be important. The Committee on Ways and Means was established as a select committee in the first session of the First Congress and in 1802 was made, and has since continued to be, a standing committee. It had jurisdiction over both revenue and appropriation bills, and it also exercised a general oversight over the public debt and the departments of government. Until near the close of the Civil War it retained jurisdiction over bills both for raising and spending money, and also those relating to currency, but its work then became too great for one committee to perform, and in 1865 the Committee on Appropriations was created, with a jurisdiction over certain supply bills, and in the same year that on Banking and Currency was established to take charge of currency bills.

The general political importance of taxation under our government, added to that of bills for spending money, easily gave to the Committee on Ways and Means the primacy among the committees of the House. Its chairman was given the place of titular leader of the House, a position which he still retains even with its diminished jurisdiction. As a natural consequence, it has borne upon the roll of its chairmen

some of the greatest names identified with the history of the House of Representatives. Its present jurisdiction embraces all revenue bills, which the Constitution provides shall originate in the House of Representatives. It also has charge of measures relating to the bonded debt of the United States. At a time of general tariff revision its work becomes arduous in the extreme and of the first importance, but, aside from general tariff bills, it has many measures of prime consequence. For instance, since the general tariff revision in 1897, it has reported the Spanish War revenue act and the various measures repealing the same. It had jurisdiction over the Porto Rican tariff bill, which directly involved the question whether we could hold and govern colonies outside the restraints of the Constitution, and which emphasized anew the intimate relations between taxation and liberty. It had charge of the various Philippine tariff bills. It also reported the Cuban reciprocity bills, the first of which under the parliamentary system of Great Britain would, on account of its political importance and the defeat of the administration, have involved the retirement of a ministry or the holding of a general election, and the second of which was made the occasion for calling a special session of Congress. It also had the direction of the bills relating to denatured alcohol, the Alaskan seal herds, various reciprocity agreements, and of many measures dealing with customs districts and the collection of revenue.

The Committee on Appropriations is the principal committee having jurisdiction over supply bills, although some of the great appropriation bills are in charge of other committees. The most notable excep-

tions are the Post-office bill, the greatest of the appropriation bills, carrying more than two hundred million dollars each year, which is in charge of the Committee on the Post-office and Post-roads; and the Army and Navy bills, carrying together more than two hundred millions, which come respectively under the Committee on Military Affairs and the Committee on Naval Affairs. The Committee on Appropriations has jurisdiction generally over appropriations for legislative, executive, and judicial expenses, for sundry civil expenses, for fortifications and coast defenses, for the District of Columbia, for pensions, and for all deficiencies. The work of this committee involves a study of the operation of the great departments, and requires an intimate knowledge of the workings of the machinery of our government. Its chairman is by prescription a sort of official watch-dog of the treasury, and he not only resists vigorously amendments increasing the amounts carried by his own bills, but he is very critical of the bills appropriating money, reported from other committees, such as the Army and Navy and Agricultural bills.

It would probably be better if all the supply bills came from a single committee. Expenditure would thus be better proportioned between the departments of the government, and to the revenue as well; experience in dealing with many bills would produce a more capable body of men, and the danger also would be averted which has more than once been hinted at, — that a committee with a single bill might attempt to increase its own importance by augmenting the size of its appropriation.

Our system at this point is criticized in comparison with the system prevailing in the British Parliament. There is an obvious advantage in having the Government directly represented on the floor of the House, as is done in Great Britain, especially during the consideration of supply bills. But the difference between the two systems is much exaggerated, for very nearly the same thing in substance is seen in our own House. The departments are required to submit in advance the most detailed estimates of their requirements for the fiscal year under consideration. Often the chief secretary, and invariably the trained experts, who are more deeply versed in the details of the business of their departments than is any political secretary, appear before the committee making up the bill. They are examined and cross-examined with great care, and their testimony is taken down by stenographers. In cases where there appears to be any ground for it, independent investigations are undertaken by the committee, and the chairman and his associates become acquainted with every detail of the needs of the departments and, incidentally, with the methods of their administration. Thus the members of the committee are likely to discover the existence of abuses, which would not be so apt to come to the surface, if the formation of a bill were entirely in charge of a department chief. They finally formulate the bill and report it to the House, where it is considered in Committee of the Whole, first in general debate and then under the so-called five-minute rule. The chairman of the committee, or any other member representing it, is interrogated upon the floor precisely as an English

minister is interrogated, and, indeed, with more freedom, and every questionable item of his bill is subject to attack and liable to be increased or decreased, or even stricken out, by amendment. A chairman of the Committee on Appropriations, who is well fitted for his work, like Mr. Cannon or Mr. Tawney, becomes one of the institutions of the House, and it would require a cabinet minister of the first rank to make as safe and as effective a leader.

The Committee on Naval Affairs has jurisdiction not merely over the naval appropriation bill, but over bills relating to the number of battleships, the number of sailors; and, in general, all legislation relating to the Navy. The Committee on Military Affairs exercises the same jurisdiction over proposed legislation concerning the army.

The committees on Interstate and Foreign Commerce, on Rivers and Harbors, and on the Judiciary are of prime importance. The first-named committee has jurisdiction over bills relating to commerce between the States and with foreign countries, and has jurisdiction also over the Panama Canal. It has reported and has had the direction of measures relating to pure foods and drugs, as well as of the various bills for the regulation of railroads. The Committee on Rivers and Harbors has charge of projects for the improvement of rivers and harbors and for the construction and improvement of artificial waterways, while the Judiciary Committee has jurisdiction relating to judicial procedure and to the courts generally, to impeachments of public officers and to constitutional amendments. Bankruptcy bills and those establishing new districts for courts increase

the work of this committee, while it acts upon legal matters as a sort of adviser to the House. Difficult legal questions, arising in the course of business, are often referred to it. The work of this committee is probably as laborious as that of any of the committees.

The Committee on Rules is an important committee in the political sense. Originally its jurisdiction appears to have been only to prepare and report the permanent body of rules at the beginning of a Congress. Its importance was augmented in 1858, when the Speaker was added to the membership. In 1880 it was made a standing committee, and, eleven years later, it was given the important privilege of calling up its reports at any time for consideration, although it seems previously to have exercised this privilege by usage. At the first session of the Sixtieth Congress, however, a report of the Committee on Rules, on a subject other than the rules and order of business, was called up, and Mr. Speaker Cannon held upon a point of order, made by Mr. Mann, that, as the report in question did not relate to the procedure of the House, it did not possess the privilege of the rule. He made this decision, notwithstanding the fact that, as chairman of the committee, he had acquiesced in the report in the belief that it was entitled to immediate consideration. This privilege, therefore, only extends to such measures as relate to the procedure. And it is a very important privilege for the House. It enables the Committee to intervene during the consideration of any measure; and when the House becomes hopelessly tangled in its own rules, as it sometimes does, the Committee on Rules may provide a means of escape through a rule especially

devised for the situation. It is in the power of the Committee to propose any method of procedure, and the right to call up its report at any time and the previous question make its specifics immediately available, if the House wishes to take them. In effect this power is not different from that, conferred by some of the special orders, which at times has made the English speaker a parliamentary dictator, except that any given order of the Committee on Rules must, before it becomes operative, receive the sanction of a majority of the House, the existing practice simply enabling it to bring the order immediately before the House for action. The Committee has no power to prevent the passage of a bill.

Professor Redlich, in his very learned work on "The Procedure of the House of Commons," says that "alteration in rules is nowhere subject to so few difficulties as in the House of Commons;" — nowhere, perhaps, unless in our House of Representatives, where special rules of the most revolutionary character may be brought in by the Committee on Rules and adopted by a majority, after the forty minutes' debate allowed under the operation of the previous question. An obstructionist, while in the act of delaying the House, may be taken from the floor by a report of this committee, and a special rule or order, without limitation as to its character, may be brought before the House for action. Theoretically, the entire code of rules may be changed in this way and the whole order of business revolutionized. It is not conceivable that there could be an easier way of altering the procedure of a legislative body. The extraordinary power of this committee is only one of initiative as to procedure, and its recom-

mendations do not become operative unless sanctioned by a majority of the House. The ordinary procedure, for the transaction of business in a large assembly, may be employed for the purpose of preventing the transaction of any business at all. The chief function of the rules committee is to prevent the House from becoming the slave to its own forms of procedure, and to give it the opportunity to decide upon occasion to dispense with them, or, in other words, to permit the majority at any given moment to assume control.

In addition to the committees to which I have referred, there is another class called select committees, appointed for some special purpose. The distinction seems to be that the standing committees are created with a definite jurisdiction in the general code of rules, and, with their formal adoption every two years, continue as established organs of the House from Congress to Congress, while a select committee is, as a rule, created by some special resolution for the performance of a particular duty, as for instance the conduct of an investigation, with the performance of which it ceases to exist.

The committees of the Senate are appointed by the Senate itself upon the nomination of a committee of Senators made up from both parties. They generally exercise an authority corresponding to that of the House committees. The Committee on Finance of the Senate, which corresponds to the Ways and Means Committee of the House, has the jurisdiction of the latter committee and also generally a jurisdiction over financial matters. The Committee on Foreign Relations has a much more important work than the corresponding com-

mittee of the House. This follows from the fact that the Senate has jurisdiction over treaties with foreign powers, and they are referred in the first instance to the Senate committee.

The jurisdiction of the various committees in the Senate is further extended on account of the work of confirmation to office of those nominated by the President. The judicial appointments, for instance, are first considered by the Committee on Judiciary, post-office appointments by the Post-office Committee, army appointments by the Committee on Military Affairs, and so on through the different grades of service.

I have not thought it material to consider in detail the jurisdiction of the various committees, except those of the most importance. As a rule the name of a committee indicates pretty well the character of the bills and other measures referable to it. While bills are referred to committees under the rules according to the general jurisdiction of the committee, yet either House itself may, if it should decide to do so, refer any bill to a different committee, and the committee will take jurisdiction through the special action of the House.

The standing committees of the two Houses do not act jointly, but they are the organs of their respective Houses. A very limited number of the committees, however, are joint committees, notably those on Printing and on the Library, but these committees exercise jointly certain administrative powers, given them by statute, and only in exceptional cases do they act jointly with reference to proposed legislation.

The first member of each committee named by the

Speaker becomes the chairman, and the rank of the other members is determined by the order in which their names appear. In the appointment of select committees under special resolutions, the old practice of appointing the member who offers the resolution as the chairman is not now usually followed, except as to committees of ceremony.

The committees, with the exception of the one on rules, are not permitted to sit during the sessions of the House without special leave. Their proceedings are usually public, although it is within their power to hold sessions in secret. But the latter course is usually adopted, only for the purpose of discussing business and voting upon measures. It is not unusual, however, for investigating committees to conduct their investigations in secret. Mr. Hoar of Massachusetts, when this question was under discussion in the House of Representatives, declared that with the single exception of the Credit Mobilier investigation in the House, it had been left to the committee to decide whether the investigation should be secret or open, and in that investigation publicity had been detrimental, since it gave opportunity to persons, who might testify to important facts, to put themselves beyond the reach of the committee.

It has sometimes been urged that the bi-partisan composition of committees is antagonistic to the idea of responsible party government,* but this point is, I think, not a sound one. It is by no means necessary to have a committee unanimously of one party,

* Woodrow Wilson's "Constitutional Government in the United States," page 99.

in order that it may report a party measure. There is always a decided preponderance of membership taken from the party controlling the House, so that upon a partisan question the committee will almost invariably reflect the views of the majority of the House. That being the case, the representation of the minority upon committees rather intensifies than does away with partisanship. Upon all political questions the warfare begins in committee. The provisions of bills are sifted, witnesses are examined and cross-examined, and arguments are made in this miniature assembly as they would be in the House itself. The proceedings often are not lacking in acrimony and party passion, and, when the question is finally brought before the House, both sides are better armed to wage a party warfare. The minority, as well as the majority, is enabled to perfect its policy, and oftentimes it antagonizes the measure recommended by the majority with a bill of its own. The membership of our Houses is as a rule wholly divided between the two great parties. There may occasionally be alliances between one party and a section of the other, but groups or "caves" are almost unknown, and the member who fights between the party lines, either in committee or before the House, usually fights in a position of especial danger. There is quite too much rather than too little partisanship in the two Houses.

As to non-political measures, there would seem to be no good reason why they should not be considered by committees made up from both parties. Many measures of that character deal with the special interests of different localities, and, upon the basis of the

membership in the present Congress, if the committees were wholly taken from the majority, a great section of the Union would have no representative to take care of its interests in the preparation of certain bills. In the preliminary preparation of the River and Harbor bill, for instance, the representatives of States, holding the lower Mississippi and bordering upon the Atlantic and the Gulf from Newport News to the Rio Grande, would practically have no voice. As to a multitude of the measures, which come within the jurisdiction of Congress and engage its attention, there is no more reason why partisanship should govern in their consideration than that it should govern in the proceedings of the courts.

The Parliament of Great Britain is in effect conducted upon the committee system. First, omitting the Committee of the Whole, which in this sense is not a committee at all, there is the cabinet, which is really a committee of the two Houses and is responsible for measures for which it chooses to assume the responsibility. Then there are the two great standing committees, with their bi-partisan organization, and differing from our American committees chiefly in the somewhat cumbrous method of their appointment. Then it has its sessional committees and a large number of special committees, sometimes amounting to more than forty in a single session.

Say what one may against the committee system, it is manifestly impossible for a large legislative assembly, having jurisdiction over a great nation, to transact its business without some such organization. It must of necessity have its eyes and ears; it must

create its special organs to gather and systematize the information necessary for final action. What could our Houses as a whole know of the merits of a bill for a street in the northwest quarter of Washington, or for a bridge across a navigable river in Oregon, or indeed of any one of nearly all the great number of measures pressing for action, unless they were first investigated by committees established for the purpose? And it hardly needs to be said that the vast amount of information, so necessary for the guidance of Congress, should not be collected by organs entirely partisan.

The committees have clerks who are sworn and who make a record of the proceedings, and in general the procedure of the House of Representatives is followed. If a quorum is present, a majority vote may authorize a report, although it may be but a minority of the whole committee. The report of a standing committee is made by a single member, usually, but not always, by the chairman, and the minority views are signed by the members who dissent from the report. These views under the rules are presented to the House at the time the report is made, although it is the common practice for the House to give its consent to the minority to present its views after the report has been made. Strictly, however, the minority members cannot make a report presenting a proposition of legislation which will have the status of a report. If an opportunity is given during the consideration of a measure, they may present a proposition upon which they have agreed, as an amendment to the bill reported by the committee, but under the rules it would have no parliamentary status different from that of any other

amendment, which might be in order and offered from the floor. The reports are made to the House by giving them to the Clerk, who enters them upon the journal, but certain committees may report in the open House at any time upon privileged matters.

CHAPTER IV

Order of Business. Privileged Business

Matters of business, as they are reported from committees, are referable according to their nature to some one of three calendars. These are the calendar of the Whole House on the State of the Union, commonly called the "Union Calendar," to which are referred revenue and appropriation bills and all other bills directly or indirectly appropriating money or property; the House calendar, where public bills go which do not raise revenue or appropriate money or property; and the calendar of the Committee of the Whole House, to which are referred all bills of a private character. These three calendars were first formally established in 1880, although two of them had existed for many years, as a matter of practical necessity in the transaction of business. Formerly nearly all business was referred to the Committee of the Whole House and the Committee of the Whole House on the State of the Union. The practice had been gradually developing which resulted in the calendars for revenue and appropriation bills, for other public bills involving appropriations, and for private bills, but before 1880 there was no calendar for bills of a public character, which did not raise revenue or appropriate money, and which had usually been considered during the hour then allowed for making committee

reports. On account of the increasing number of these reports, it became necessary to establish the House calendar, for the primary purpose of relieving the morning hour from the consideration of these bills, so that the reports of committees might be made with greater freedom. When bills are reported they are referred to their appropriate calendars, as determined by the rule, the substance of which I have given. If a bill is reported adversely, it is laid upon the table, unless the committee at the time of making the report, or any member within three days afterwards, requests its reference to a calendar, in which case it takes its place upon the proper calendar.

I have now outlined the course of proposed legislation, from the time of its introduction, until it is again brought back by the committee, to which it was referred, and finds its place upon one of the calendars of the House; and we come to the order of business, which deals with the selection of measures to be acted upon by the House, and which, because of the necessity of passing over many measures, in order that those that are the more important may be considered, is perhaps more generally misunderstood than any other part of the procedure of the House. With sixty different committees, of which more than twenty are active, reporting bills, it will be seen that there will soon grow an accumulation of business upon the calendars, all of which it will not be possible for the House, in the time at its disposal, to debate fully or even to vote upon. Obviously, therefore, there must be some method of sifting out measures and of limiting debate. We occasionally have delightfully portrayed to us a mythical assembly, each one of

whose four hundred members may take the floor at any moment and proclaim to a curious country his views upon some great public question, or may call up for action any measure, that he may think of concern to his own constituency or to the nation at large. It is hardly necessary to say that such an assembly, as the legislative organ of a great nation like our own, can have no existence save in the imagination. It scarcely follows, because we happen to live in what is called a free country, that everybody is at liberty to do as he chooses. We should be anything but free, if the individual were not required to respect the rights of others and of society as a whole; and in a House of four hundred equal members in this or any other country, the rights of the individual member must be strictly subordinated to the rights of the House as a whole, secured by just rules which are adapted, as above all other things they should be, to subserve the interests of the whole country. There should be no aristocracy of members, but there must of necessity be an aristocracy of measures. Those most vital to the country should have priority, or what is called privilege. Let us see what sort of process for sifting out measures has been developed.

Privilege among measures has been slowly evolved. It would naturally apply first to questions, relating to the procedure of the House itself and to the method by which it transacted its business; and, therefore, the highest privilege attaches to reports from the Committee on Rules, which may be made and called up at any time, if they relate to procedure; and during the consideration of a report from this committee dilatory pro-

ceedings are prohibited, and only one motion to adjourn may be entertained. After orders relating to the processes of the House, naturally come questions which concern its membership, such as the right of a member to a seat, or those which involve the privileges of the House as a whole, or of some individual member. The raising of money for the support of the government and the appropriations for maintaining the different arms of the national service are also matters that enjoy a high privilege. Then there is a class of resolutions calling upon the different executive departments for information, which must be reported back by the committee within a week from the time of their introduction, and, if not so reported, a motion may be made in open House to discharge the committee from further consideration and to proceed to immediate action. Information thus obtained may be of vital importance for purposes of legislation. A further reason for this privilege is found in the inquisitorial power of the House, which should exercise a constant supervision over the workings of all the departments of the government. The head of a department is liable to be called upon at any time, if the House so votes, to transmit information concerning the administration of any matter under his jurisdiction, and it is not within the power of any committee to suppress such an inquiry by failing to make a report upon it.

The Committee on Enrolled Bills has a privilege only second to that of the Committee on Rules, because, having charge of a measure in its last stage before enactment,— when it represents the results of the previous deliberations of the House,—it becomes a matter of high

privilege for the House to take the final step. The Committee on Ways and Means, upon Elections, and upon Appropriations have the privilege of reporting at any time on account of the nature of their jurisdiction. In order to meet the expenses of the government, money must be raised by taxation, and hence revenue bills are privileged. The judges and other officers of the courts, the members and employees of the executive departments and our soldiers and sailors must be paid or the wheels of government will stop, and therefore appropriation bills must have the right of way.* The most superficial survey of the operations of our government will disclose certain indispensable things our legislature must do, and hence the right of the individual member to talk when he will and to assume direction of the House, when he wishes to call up a bill of his own, must give way to those things, which of necessity must be done in the general public interest. It is a fine thing to declaim about, — that right of the individual member and the tyranny of the order which keeps him down, — but it would be a trifle inconvenient to the country to permit him to range in his native freedom unfettered by any rule, for, notwithstanding the noble provisions of our Constitution, we might be left without any lawful or orderly government.

The right of a committee to report at any time is not in itself of much consequence under the present

* "The appropriation bills, with their yearly burden of a thousand millions of dollars, are a great portion of the work of this House. They may be said to carry in themselves the security, order, and civilization of the United States." — Mr. Speaker Cannon, Jan. 16, 1911.

practice of the House, although in former times the difficulty of making reports was sometimes very material, and this privilege was then important. But strictly the privilege would now be of little importance, except that it has been long established that it carries with it the right of consideration; and that is a vital matter in the transaction of the business of the House. The right of reporting at any time, rather than the mere priority in the making of a report, gives a measure its right of way. The bills privileged to consideration are found upon the calendars of the two Committees of the Whole.

The rule provides that the order of business after the prayer by the Chaplain shall be the reading and approval of the journal; the correction of reference of committee bills; disposal of bills on the Speaker's table, including reference of messages of the President; reports from heads of departments, and other communications, and bills, resolutions, and messages from the Senate; the unfinished business, which is the business upon which the House was engaged at the time of adjournment, except certain matters which have special periods assigned to them and become unfinished business in their periods only; then the morning hour, and then motions to go into Committee of the Whole. The general order of business provided by this rule made it a matter of great difficulty to reach important measures, and it has been much modified in practice and by other rules. The most important change is made by a section of rule sixteen which provides that at any time after the journal is read it shall be in order, by direction of the committee having the business in charge, to move

to go into the Committee of the Whole House on the State of the Union to consider revenue or general appropriation bills. The importance of yielding priority to bills of this character had become evident in the time of Mr. John Quincy Adams, and for nearly three-quarters of a century it has been in substance the procedure of the House. The business of Congress has increased so enormously since this practice was adopted that no one would now question its necessity.

The present order of business represents the result of a long development. The rules of the First Congress did not provide any order of business at all. There was ample time in those days for the transaction of all business that was offered, and it was not necessary for the House to discriminate between measures. But as the business increased, so that it could not all be transacted at a given session, discrimination became necessary. At first members would present petitions, and the committees would report upon them as they were recognized by the Speaker, and the business would be considered in the order in which it came before the House. Propositions for giving one class of measures priority over another class were not received with favor. The practice grew up of devoting the first hour to the presentation of petitions. This custom was incorporated in a rule in 1811, which provided that after the reading of the journal the members should be called by the Speaker for the presentation of petitions, and after these had been presented and disposed of, reports of committees were in order; and it was provided that these two classes of business should not be in order at any other time of the day, the remainder of

which was devoted chiefly to what were termed orders of the day.

The hour allowed for the presentation of business was insufficient by 1832, and the rule was enlarged. So many petitions were not acted upon by the House, that complaint was made that the right of petition was denied. In 1842 petitions had so multiplied that upon motion of Mr. John Quincy Adams the plan was adopted of having them given to the Clerk for entry in the journal and for reference as indicated by the member. Ultimately the introduction of bills and of reports was solved in the same way, which resulted in saving much of the time of the House.

The abolition of the morning hour for reports in 1890 still further simplified the method of getting business upon the calendars. While to-day privileged reports are made in open house, they are relatively few in number, although their consideration consumes a great part of the time of the House. Practically no time is now wasted in the reporting of bills.

The third calendar, commonly called the House calendar, was formerly termed "the legislative graveyard." When a measure upon that calendar had been called up for consideration by a committee during the morning hour, it was subject to displacement, unless passed in two successive morning hours; and even if a large majority of the House wished to pass it, it could easily be defeated by a small but determined group of members, who were opposed to it and could consume the allotted time in debate. Mr. Speaker Reed did away with this obstruction by devising a rule which made the morning hour of indefinite length. Occasionally

bills are taken from the House calendar and brought before the House for action by a special order reported from the Committee on Rules and passed by the House; otherwise the bills upon this calendar are taken up under what is termed the call of committees during the morning hour. After the unfinished business has been disposed of, the committees are called by the Speaker, and each committee when named may call up any bill previously reported by it which is on the House calendar. The morning hour has changed greatly in meaning at different times in the history of the House, and it is now practically a misnomer. It is not an hour of sixty minutes, but continues indefinitely, unless a motion is adopted which brings it to an end, or unless it is interrupted by a motion to go into Committee of the Whole, or by a privileged report. At the end of this morning hour, the business that is under consideration and unfinished is in order at the next call of committees, and it remains in order for future morning hours until it shall finally be disposed of. The change in the rule I have referred to, which formerly displaced a measure not passed in two consecutive morning hours, greatly improved the standing of the House calendar, for when a measure is once taken up, it remains the unfinished business until the House comes to a final vote upon it. But after a given committee has consumed two consecutive morning hours, and the last bill which it calls up for action has been disposed of, the next committee upon the list is entitled to the call. All questions relating to priority of business are voted upon by the House without debate, and the important motion to go into Committee of the Whole is not debatable.

The regular order of business is much interrupted by the transaction of business by unanimous consent. At times when partisanship is not active in the House, measures of purely local interest and often important measures of a general character are considered by unanimous consent and passed. When a request is made for unanimous consent to consider a bill, it is the custom for some member to take the floor and, reserving the right to object, to demand an explanation of the measure. This is given, and if it appears to be a proper measure, objection is not made, and the House immediately acts upon it.*

The chief exceptions to the general order of business, other than those to which I have referred, are that every Friday is set aside for private business and the second and fourth Mondays of each month for business relating to the District of Columbia, of which Congress is the local legislature; and the first and third Mondays of each month are suspension days. Upon the first Monday it is in order for the Speaker to recognize any individual member to move a suspension of the rules, and it has been held that, if recognized, a member might move to bring up a matter that had not been referred to a committee or reported upon by it. On the third Monday of the month it is in order to move to suspend the rules and pass such measures, reported by committees, as the committees should have authorized the members having the business in charge to call up in

* The practice in the passage of bills by unanimous consent has been much modified by a rule of the Sixty-first Congress establishing a "unanimous consent calendar" which is called upon suspension days after the approval of the journal.

that manner. A motion to suspend the rules must receive a two-thirds vote, and, if it prevails, it suspends all rules, even the rule relating to reconsideration, and the measure at once passes its several stages at a single vote.

When the time required for private business, for legislation relating to the District of Columbia, for suspension of the rules, for the appropriation bills, and for other privileged business is considered, it will be seen that only a very limited amount of the time of the House can be devoted to what is called the House calendar or to the Union calendar, excepting such bills as may be taken up out of their order by a privileged motion. But the House is not a slave to its own order of business, and questions of consideration may be raised upon any measure that is called up in the House, even in its order on any of the calendars. Under the rule, any member may demand that the question be put on the proposition offered, "Will the House now consider it?" and it is within the power of a majority of the House to vote either to consider or not to consider. This is an ancient practice of the House. In the earlier Congresses, in the absence of any rule upon the subject, it became the practice for the Speaker to put the question of consideration without any motion by a member. Mr. John Randolph, in 1808, in secret session, offered two resolutions upon which the question of consideration was put, and the House refused to consider them. This led to a characteristic demonstration on the part of Mr. Randolph, and he declared that the proceeding was "an engine of oppression" in the hands of a majority, and he

proposed a rule that the question of consideration should not come up to prevent debate. His proposed rule was not passed. Again, four years later, Mr. Randolph attacked the practice of taking a vote upon consideration, but Mr. Henry Clay, who was then Speaker, said that, while he had entertained doubts as to the propriety of the practice, he had become convinced of its wisdom. The ruling gave rise to a controversy, and Mr. Clay wrote a letter to the press, saying "that the right of one or two members to compel a body to consider a proposition, which on account of the time or its character they do not think proper to deliberate upon, can only be maintained by a reversal of the rule that the plurality of the members is to govern, and would, as to that particular object, make the mover and his second superior to the whole body."

Mr. King, of Massachusetts, brought the matter before the House in 1814 by a resolution against the practice, but the House very decisively voted not to give his resolution consideration. The rule appears shortly after to have attained its present form, that the question "Will the House now consider it?" shall not be put, unless demanded by a member or unless the Speaker shall deem it necessary. The question must be demanded, however, before the debate has been begun, and if the House votes not to consider a measure, it is not an adverse vote upon it, but it may again be brought before the House. The question can be raised even against what has been held to be a question of the highest privilege — the right of a member to his seat. It cannot be raised against a class of business coming under a special order or a rule, but when the class of

business is being considered, it may be raised against each separate bill in the class. The recent decisions are to the effect that the question of consideration cannot be raised against the report of the Committee on Rules with regard to the order of considering bills. With these slight limitations, it will be seen that it is within the power of any member to demand a vote of the House upon the consideration of any measure however high its privilege, and that the decision of the question, whether a bill or resolution shall be taken up, rests with the majority of the House.

CHAPTER V

The Committee of the Whole. The Quorum

The Committee of the Whole House, as its name implies, is simply the same body in another form. Mr. Reed traces the origin of this committee to the time when the Speaker was often the tool of the sovereign and reported to his master what the members were doing. By adopting the device of going into Committee of the Whole to discuss supply bills, the Commons chose their own chairman, and for the time being were rid of the Speaker and could speak and act with freedom. The Speaker of our House by authority conferred in the rules names the chairman of the Committee of the Whole. There is no report of the proceedings, except the stenographic report in the Congressional Record, other than that made by the chairman of the Committee to the House when the Committee rises, and when that report is made, it is spread upon the records of the House. A vote by yeas and nays cannot be taken in Committee of the Whole. "Whereby," says Mr. Reed, "the original purpose of the Committee is in a measure subserved, and the doings of the members and parties sometimes escape the notice of the modern sovereign, the people."

Very much important business is transacted in Com-

mittee of the Whole, and its sessions occupy the greater part of the time of the House. There are two Committees of the Whole, technically, one the "Committee of the Whole House on the State of the Union" and the other the "Committee of the Whole House." In the latter committee, bills of a private nature are considered, and it deals generally with the private calendar. The Committee of the Whole House on the State of the Union is the really important Committee, and its calendar includes revenue bills and the public bills which require an appropriation of money or property of the government, and it is commonly called the "Union" calendar. The Committee of the Whole was derived from the House of Commons and was an institution of the Continental Congress. It was also used by the framers of the Constitution in their convention. It is provided in that instrument that the President should "from time to time give to the Congress information on the state of the Union," and one of the first rules ever adopted by the House was that it should be "a standing order of the day throughout the session for the House to resolve itself into a Committee of the Whole House on the State of the Union," and it also provided for "reference of bills to a Committee of the Whole House," thus showing at the outset the dual character of the Committee of the Whole.

In the earlier practice, matters were brought up in Committee of the Whole House on the State of the Union which had not been referred to that Committee by the House, but for a long time neither Committee of the Whole has considered subjects not formally referred to it. In some cases measures have been

originally referred to the Committee of the Whole, instead of to a standing committee of the House.

A quorum of each Committee of the Whole is one hundred members, which is slightly more than one-half as large as the constitutional quorum of the House itself. Prior to 1890 the quorum was the same as that of the House, a majority of the whole membership, and it was often with difficulty that a quorum was secured. Bills are read in this Committee by paragraphs, and are subject to amendment. Debate upon amendment proceeds under the five-minute rule; that is, a member offering the proposition may have five minutes, and then it may be opposed for the same length of time by another member, and the discussion may be continued indefinitely by the offering of *pro forma* amendments until the Committee votes to stop it. The five-minute debate in Committee of the Whole affords the best debate that takes place in the House of Representatives. The speeches are upon a definite subject-matter and not upon general political topics or matters alien to that before the House. Members are frequently permitted by unanimous consent to proceed for more than five minutes, but only in rare cases are they permitted to speak upon subjects outside that immediately before the House. The divisions are taken by rising vote or by tellers, but the yeas and nays are not called.

The appropriation bills are perfected in Committee of the Whole House on the State of the Union. There is great freedom of amendment. Appropriations may be increased or decreased, or stricken out altogether, and new appropriations, which are not out of order under the rules, may be proposed and voted upon. The

rules do not favor "riders," or changes of existing law, upon appropriation bills. The Speaker does not preside in Committee of the Whole, and when he passes the gavel to the chairman, whom he has designated, the mace, standing upon the column at the right of his desk, which is the symbol of the authority of the House, is taken down. The proceedings in Committee are somewhat free and informal. If a member persists in disorder, the Committee rises, the mace is restored to its place, the Speaker resumes the chair, and the offender is dealt with under the rules, after which the Committee resumes its sessions. It is very rarely necessary, however, for the Committee to rise simply for the purpose of securing order. After the consideration of a measure has been completed in Committee of the Whole, it votes to rise, the Speaker resumes the chair, and the chairman of the Committee reports to the Speaker the action of the Committee upon the bill, with any amendments which it may have recommended. The House must act upon the report of the Committee to make it effective, and a separate vote in the House may be demanded upon each of the amendments recommended by the Committee. If a separate vote is demanded upon a limited number of amendments, the other amendments are acted upon in a single vote. It is also in order after the Committee has reported a bill to the House, although it is rarely done, to offer additional amendments, unless the right of amendment is cut off by the previous question.

The House sometimes sits as in Committee of the Whole, but this must be done by unanimous consent, or by a special rule. Under this proceeding debate is

usually not general, but is conducted under the five-minute rule. The previous question may be ordered, which cannot be done in Committee of the Whole. Order may be enforced upon the floor without having the body rise, as is the case in the Committee of the Whole, and the vote may be taken by yeas and nays. The body can also receive communications from the other House and entertain motions to adjourn.

The Constitution provides that a majority of each House shall constitute a quorum. In the absence of a quorum nothing can be done except to have a call of the House, to compel the attendance of absent members or to adjourn; and other business cannot be transacted even by unanimous consent. Prior to 1860 the decisions in both Houses appear to have been uniform that a quorum consisted of a majority of all members who might have been chosen, that is, of the full legal membership of each House; but at the beginning of the Civil War a large number of constituencies refused to elect, and it was practically impossible to secure the attendance of a majority of all possible members. The practice then obtained of holding that a quorum consisted of a majority of those chosen. This again was modified by subsequent precedent, and in the first year of the Civil War it was held in the Senate by a majority — Reverdy Johnson, a leading Democratic Senator being among them — that a majority of the members chosen and living was the true quorum. The Senate has finally decided that a quorum consists of a majority of those duly chosen and sworn, and the most recent ruling in the House — that of April 16, 1906 — is to the effect that after the House is once

organized "a quorum consists of a majority of those members chosen, sworn and living, whose membership has not been terminated by resignation or by action of the House."

It must be borne in mind, however, that these practices of the two Houses have not been upheld by the courts. It is not competent for either House to do business in contravention of the provisions of the Constitution, and it would be within the jurisdiction of the courts to pass upon the question whether the journal of either House showed less than a constitutional quorum at the time a bill was passed. The present practice, however, as to the size of the quorum is well established, so far as the parliamentary procedure is concerned.

Our quorum is very large, and it has sometimes been very difficult to maintain it, especially when the minority party has resorted to filibustering and has refused to vote. The quorum of the British House of Commons, which is nearly twice as large as our House of Representatives, is only forty members, while that of the House of Lords is but three members.

Under the practice which was in force down to 1890, the presence of a quorum was ascertained by the roll-call upon any given measure. A member might be present, but, if he did not respond upon the call of his name, he was not counted as present for the purpose of making a quorum. This appears to have been practically the uniform procedure, with some few exceptions which do not seem to have been well considered. So effective and easy a method of blocking legislation, as this practice offered, was sure to be employed by minorities for filibustering purposes, and during the

period following the Civil War it was very frequently resorted to. In 1860 the chairman of the Committee of the Whole declared that "it had been repeatedly held in House and in Committee that the Chair could not determine officially that a quorum was not present without a division of the House or of the Committee." In 1875 dilatory proceedings arose upon a bill, relating to the invasion of States and maintaining the security of elections, and many members declined to vote, so that no quorum actually voted. Mr. Butler, of Massachusetts, made the point that a quorum was present, and asked the Chair to note the presence of Mr. Randall, of Pennsylvania, who had not voted. The Speaker, Mr. Blaine, declined to act on the suggestion of Mr. Butler. Mr. Coburn formally made the point that there were two ways of making a record of the presence of a member. One was for him to answer upon roll-call, and the other was to have another member rise in his place and announce the presence of the member, who had not answered to his name, "mentioning his name to the House and asking that it be recorded." In that way a record would be made. Mr. Speaker Blaine said, "The chair never heard of that being done. . . . There can be no record like the call of the yeas and nays, and from that there can be no appeal. The moment you clothe your Speaker with power to go behind your roll-call and assume that there is a quorum in the hall, why, gentlemen, you stand upon the very brink of a volcano." Unless a measure had a large majority of members in its favor, the refusal to vote on the part of those opposed to it would often have the effect of defeating it; for the

usual number of those who were absent, added to those who were opposed, would amount to a majority of the whole House. It is true that those who were present could compel the attendance of absent members, but they could not compel them to vote after their presence had been secured; and for the practical purpose of making a quorum and transacting business a member might as well be absent as present and not voting.

The celebrated ruling of Mr. Speaker Reed during his first Speakership in 1890 was revolutionary in its character, only when read in the light of the precedents of a hundred years, for it was based upon principles of sound common sense, as well as upon sound constitutional grounds, and was afterwards sustained by the Supreme Court. On the 29th of January, 1890, Mr. Dalzell called up the contested election case of Smith against Jackson, which involved essentially a partisan question and the strengthening of the slender Republican majority in the House. The question of consideration was at once raised by Mr. Crisp. Upon the roll-call it was shown that one hundred and sixty-two members had voted and one hundred and sixty-six had refrained from voting, so that less than a majority of all the members had responded to their names, and under the ancient practice a quorum was not present. Mr. Speaker Reed thereupon directed the Clerk to note upon the journal as present the names of forty-one members, who were in the hall when their names were called, but who had not voted, and declared that a quorum was actually present and that the House had voted to consider. The Speaker at the same time submitted a lengthy opinion discussing the question and

finding some authority for his position, especially in the proceedings of state legislatures as well as in the practice of the British Parliament. He declared "that it is a question simply of the actual presence of a quorum, and the determination of that is entrusted to the presiding officer in almost all instances. There is a provision in the Constitution which declares that the House may establish rules for compelling the attendance of members. If members can be present and refuse to exercise their functions and cannot be counted as a quorum, that provision would seem to be entirely nugatory. Inasmuch as the Constitution provides for their attendance only, that attendance is enough. If more was needed, the Constitution would have provided for more." Probably no ruling ever made in the House of Representatives was received with such manifestations of hostility. The Speaker was denounced from the floor in terms that were very far from parliamentary. He continued, however, during the remainder of that Congress to follow the ruling when occasion required.

At the next election, the Democratic party carried the House of Representatives by a very large majority and proceeded to reverse the practice inaugurated by Mr. Reed and restored the ancient method of ascertaining the presence of a quorum. It continued this method in force in the next succeeding House, which it also controlled. During that Congress, however, Mr. Reed, who was then the minority leader, made a determined attack upon the position of his adversaries. He found that so many members of the majority party were absent in making their canvasses for reëlection and upon other business, that, notwithstanding their majority was nearly

one hundred in the whole House, a sufficient number of them were not present to make a quorum. He resorted to the expedient of demanding the yeas and nays each day upon the approval of the journal. The roll would be called, and the members of his party under his lead would refrain from voting, although present, and the vote as announced would show that a majority of all members were not present. Under the rule a call of the House would then be taken to ascertain whether a quorum were present. The members of Mr. Reed's party would answer to their names upon this call, and it would be found that a quorum was present. That fact having been determined, the question would again recur upon approving the journal, and the Republican members would again refrain from voting, and a majority of the whole House not answering, a call of the House would again be in order. This proceeding continued for weeks, and the majority party was unable to approve the journal or to transact any other business. Finally it was compelled to bring in a rule providing for the counting of members who were present, but did not vote, in order to make up a quorum. It is true that the device of having the count made by tellers rather than by the Speaker was adopted, but the principle of a present, instead of a voting, quorum was accepted by his political adversaries, and the principle which Mr. Speaker Reed established, by what appeared to be his revolutionary ruling, was recognized and has ever since remained a part of the law of the House.

This ruling of Mr. Speaker Reed came before the Supreme Court in connection with the revenue law of 1890, commonly known as the McKinley law. The

journal of the House showed that less than a quorum had voted upon the bill and that enough members were announced by the Speaker as present and not voting, if they were taken with those who had voted, to disclose the presence of a quorum. The Court held that the journal of the House showed that a quorum was present and that the House could transact business. Mr. Reed's ruling, ratified as it subsequently was by his adversaries, effectually did away with the most formidable sort of filibustering. Other kinds, however, had been practised which led to modifications of the rules, and perhaps it will be pertinent in this connection to speak more broadly of obstruction and to mention some of the more common methods of putting it in force.

CHAPTER VI

Obstruction

Obstruction is undoubtedly a legitimate weapon in the hands of a minority, but, like all effective weapons, it must be employed with skill and judgment or it may be productive of more harm than good, and especially it may cause the majority in self-defense to invade and limit the rights of minorities. It proceeds on the theory that the majority is bound to overcome every species of friction that can be made to attend the working of the legislative machine, not merely without any contribution from the minority, but against the exercise of every power which the latter has under the rules. In this country the breaking of a quorum has been a favorite method of obstruction, — a method which is of no importance in Great Britain, on account of the extremely small quorum required in the two Houses of Parliament. Debate purely for the purpose of "killing time," the taking of divisions upon all possible questions, the motion to adjourn, to take a recess, and other dilatory motions have been employed with effect, both here and in England.

Obstruction usually has one of two objects — the delay in the enactment of a given measure with the hope either of ultimately defeating it or of bringing it forcibly to the attention of the country, or the pre-

venting of legislation of every kind until some demand of the minority shall have been complied with. Obstruction of the first sort has had among its practitioners men no less distinguished than Edmund Burke in Parliament and John Quincy Adams in Congress. The former called for twenty-three divisions at a single sitting and gloried in it afterwards, while the latter refused to vote, from conscientious motives, as he declared at the time, a reason that is only very broadly consistent with the confession, found in his diary, that he regretted that five more of his party had not refrained from voting so as to break a quorum.

Obstruction of the second kind is much more modern. It seems first to have been persistently practised by Charles Stewart Parnell, who was perhaps as dauntless and as skilful an obstructionist as ever lived. He put obstruction in force, not merely to defeat the passage of particular bills, but for the purpose of paralyzing the Parliament of Great Britain and of compelling it, as the price of regaining its power of action, to grant home rule to Ireland. He brought about a condition of things in Parliament where, under the ancient procedure, which was so favorable to the rights of the minority member, the transaction of business by the majority became an impossibility. His attack was successful not only against the ancient procedure, but, as it came out, against the right of the individual member also, for he could not sanely have hoped that it would avail to destroy the power of the majority of Parliament and to sacrifice the Constitution of Great Britain to a rule of legislative action. The inevitable result in a great organ of government, like the House of Commons, was the

bringing in of a new method of procedure. "It is the first condition of parliamentary existence, for which we are now struggling," declared Mr. Gladstone. As in our own House of Representatives in 1890, Mr. Speaker Brand, afterwards Viscount Hampden, of the British House, made a ruling which destroyed the force of technicalities and brought the measure before the House immediately to a vote, and this course was followed by drastic rules. The most obvious result of the extreme obstruction, practised by Mr. Parnell, was not to establish home rule for Ireland, but cloture for the British Parliament and the limitation of the rights of minorities.

Although that era witnessed the first establishment of cloture in the orders of the House of Commons, there had been, almost from time immemorial, a form of cloture effective for all ordinary purposes. Whenever the House did not wish to hear a speaker, or had heard him enough, it would give unmistakable evidence of its feeling by the noises of which Henry Clay spoke and which practically denied the member a hearing. At least one of the greatest of parliamentary orators, Mr. Disraeli, very early in his career had this form of cloture put in force against him, and he forcibly made the prediction, which was afterwards verified, that the time would come when the House would hear him.

The present Speaker of the House of Commons recently referred to a dictum of a former Speaker who, when appealed to for order, said, "I can call upon you to speak, but I cannot compel the House to hear you." The present Speaker dissented from this dictum. There can be no doubt, however, if we are to credit

contemporary reports upon high authority, that the former Speaker correctly represented the custom of the House in his time. Since the establishment of cloture, when the House can by formal vote protect itself from speeches which it does not wish to hear, the position of the present Speaker is very likely correct.

The modifications of the rules of the House of Representatives, in the direction of limitation upon amendment and debate, have been brought about in large measure as a result of filibustering. The minority at different times in our history, by a misuse or by an extreme exercise of its powers, has compelled the House to restrict them. Speeches, ranging in length from twenty-four hours down and made for the obvious purpose of "killing time," aided in the development of the previous question. In the same way technical amendments presented to consume time in the disposal of them, the breaking of the quorum by the refusal to vote, dilatory motions to take a recess or to adjourn, and calls for the yeas and nays upon measures of trivial importance have driven the House from time to time to administer the proper remedies for these abuses. An effective way of dealing with formidable obstruction has sometimes been found to lie in a temporary increase of the power of the Speaker. During the first session of the Sixtieth Congress, the accomplished Democratic leader, Mr. Williams, adopted the policy of obstruction, and for a purpose somewhat similar to that for which Mr. Parnell had employed it. He did not undertake it, as had usually been done in this country, simply to delay the passage of a particular measure, but he avowed the purpose of forcing the

majority to pass certain bills which he desired enacted. He threatened that, until the House should pass bills relative to publicity of campaign expenses, limiting the use of injunction, putting print paper on the free list, and some other measures, he would, in every possible way under the rules, delay the other business of the House. This delay he accomplished chiefly through unnecessary roll-calls. When general appropriation bills are returned from the Senate with a multitude of amendments, such as they often have, it is possible to have an almost endless succession of roll-calls. The ordinary methods of filibustering, which had commonly been resorted to in the past, had been rendered comparatively ineffective by the general rules, but the Constitution gives to one-fifth of the members present the right to demand the yeas and nays upon any division. That is a right which no rule can take away. But rules can be devised, which would much limit the number of parliamentary questions before the House, and thus minimize the effect of the obstruction. Mr. Williams, supported by his party, was able under the general procedure of the House to demand so many roll-calls as to make progress exceedingly slow. His tactics were met by special orders, reported from the Committee on Rules and adopted by the House, aimed at reducing the number of divisions that could be called for. This was done by putting the question, "Will the House disagree with the Senate amendments *en bloc* and request a conference?" The motion for a recess was declared to be a privileged motion, so that the legislative day might be continuous, thereby avoiding the necessity of a daily reading of the journal, with

the consequent divisions on its correction and approval. The general course of an appropriation bill through the House was fixed by a rule conferring upon the Speaker the power to declare the House in Committee of the Whole, and giving the chairman of the Committee of the Whole from time to time authority to declare the Committee in recess. A rule was passed, making it in order during the remainder of that session, to pass any of the general appropriation bills under suspension of the rules by a majority vote, and, finally, every remaining day was declared to be a "suspension day" on which the motion to suspend the rules might pass by a majority, instead of by a two-thirds vote. This greatly augmented for the time being the Speaker's prerogative of recognition and gave him practically the initiative over all legislation.* Incidentally, also, it afforded another illustration of the abuse of freedom leading to autocracy.

Expedients such as these were demanded, in order to avoid the necessity of compelling the majority to choose between the alternatives of abdicating to the minority, or of being powerless to work the legislative machine. It was inevitable that, after much waste of time, remedies should be applied so that the House might perform its chief constitutional function, for no more easily in the House of Representatives than in the House of

* A rule very similar to this was adopted in the House on Feb. 20, 1911, by a majority, the size of which may be inferred from the fact that its opponents could not command votes enough for tellers or to demand the yeas and nays. This proceeding in a House which in its earlier days had voted to curtail the power of the Speaker, strikingly shows the necessity upon occasion for a highly centralized parliamentary power.

Commons would what Mr. Gladstone called "the first condition of parliamentary existence" be abandoned. The extreme assertion, therefore, by Mr. Williams of the rights of the minority under the rules, led to a curtailment of those rights by a further change of the rules. And that is apt to be the common fate which follows extreme filibustering, conducted not for the purpose of delaying or defeating an obnoxious measure, but for the purpose of compelling the majority to surrender and permit the minority to dictate a general program of legislation.

The rule formerly required members to vote unless excused on motion made before the division, and the abuse of this motion to excuse gave an ideal opportunity for filibustering. For instance, in 1850, upon a resolution concerning the admission of California to the Union, a member from Florida moved that he be excused from voting. The question was put, the yeas and nays ordered, and a member from Mississippi moved that he be excused from voting on the motion to excuse the member from Florida. The latter motion was objected to, as it would multiply divisions and prevent the transaction of business, but Mr. Speaker Cobb held the motion in order and said that the Chair could not do otherwise than entertain it. Then an appeal was taken, and a motion was made that the appeal lie upon the table, and there was an intricate series of motions of this character, with motions interspersed excusing various members from voting upon them. During that legislative day there were thirty-one roll-calls, and practically no business was transacted. Again in 1854 there were one hundred and one roll-calls upon a single

legislative day, upon motions similar to those made upon the California resolution. This easy method of filibustering was done away with under Mr. Reed's first Speakership when the motion to excuse was stricken from the rules.

CHAPTER VII

The Previous Question, Debate and Amendment

Obstruction, through speeches made and amendments offered for the simple purpose of consuming time, has had much to do with hastening the development of the previous question, but the gradual increase in the number of members and in the amount of business has also contributed very materially to bring about that result. Something may be seen of the extent to which both causes have contributed to the development of the previous question in what I shall say regarding debate and amendment.

The previous question, as the device is called, by which debate and amendment may be cut off, is one of the most important features in the procedure of the House. The term is an ancient one, although the meaning it now has is quite modern. In the British Parliament the previous question was used to remove a question from consideration, which the majority did not wish to discuss further or to act upon, and it appears to have been employed for the same purpose in our Continental Congress. The old form of the previous question that "The main question be not now put?" was changed in the first Congress by omitting the "not" and was put in the form "Shall the main question be now put?" Why this amendment was made does not appear. It

evidently was not intended to afford a means of closing debate. At least, if it were so intended, the intention was soon forgotten. The rules of that Congress required that it should be demanded by five members. It was debatable, although no member could speak upon it more than once without leave. If the House ordered the previous question, there could still be further discussion on the merits of the main question; but if the House refused to order it, it would then consider other business. The use of the rule, however, was very rarely resorted to on account of the small membership and the lack of real necessity for it.

In 1805 the rule was changed so that, when the previous question was demanded, there should be no debate on whether it should be ordered. The rule, however, did not limit debate upon the main question, even when the previous question had been ordered. Mr. Randolph, of Virginia, appealed from a decision of the Chair to the contrary effect and the Speaker was overruled by an overwhelming vote. The result of this action of the House, in confirming the old practice of giving an opposite interpretation to the rule from what it really appeared to mean, was to continue unrestricted debate, and it was very difficult to obtain a vote upon measures where there was a wide difference of opinion. In 1811 in a discussion of a bill interdicting commercial intercourse with Great Britain and France and their dependencies, after the previous question had been ordered, a member from New York, with well-known capacity for consuming time, took the floor. The same Speaker, who had held that the previous question shut off debate upon the main question and

who had been so overwhelmingly overruled by the House, in deference to the former action of the House, held that it was in order to discuss the main question. Thereupon, the House reversed its previous action upon appeal and overruled the Speaker. Thus the previous question was established as a cloture.

An attempt was made in 1816 to abolish the previous question, in which John Randolph came into conflict with Henry Clay. The former denounced it as a gag law, and the latter declared that abuses of debate had made it expedient and called to mind the fact that a member, for filibustering purposes, had spoken continuously twenty-four hours. Mr. Clay said that there was superior feeling for debate in our House to that which existed in the British House of Commons, for there debate could not be protracted beyond the rising of the House, and they often stopped a member from speaking by making noises so that he could not be heard. The number required to second the demand for the previous question was gradually increased until it required a majority of the House. The provision requiring a second, however, was stricken from the rules in 1880.

The ancient previous question was not an effective device. If it were ordered, it could only be invoked to bring up the main question, and could not be demanded on an amendment. The rulings were very contradictory. It became the practice to hold that the previous question cut off pending amendments and brought the House to a vote on the bill. This inconvenient practice continued for nearly twenty-five years, and in 1836 the Committee on Rules made an effort to have the previous question operate to secure

a vote on pending amendments as well as on the main question, but the House refused to adopt the rule, and again a year later it rejected the same recommendation. But in 1840, upon motion of Mr. John Quincy Adams, the House adopted the rule that the passing of the motion for the previous question put an end to debate and brought "the House to a direct vote upon amendments reported by a committee, if any; upon pending amendments, and then upon the main question." A few years subsequently the effect of an affirmative decision was enlarged, so that it would apply to a motion to commit, but there were still motions permissible after the ordering of the previous question which might give rise to endless debate. A negative decision of the House also produced inconvenient results. For many years it was held that a failure to pass the motion removed the main question from before the House, so that it would have to come up again upon a subsequent day. This rule was followed until the revision of 1860, when the principle was finally established that a negative decision left the main question the same as if the previous question had not been demanded.

As at present perfected, the previous question is certainly very efficient in its operation. It cannot be put into effect until a majority of the House has decided in its favor, and it proceeds entirely upon the principle that after a question has been debated, much or little, it shall be for the majority to say whether it desires to hear more debate. Undoubtedly it has sometimes been applied to prevent a sufficient discussion, and especially to prevent the minority from being heard. It has also

prevented some good oratory and permitted a good deal of bad oratory. The House in its impatience at long speeches is quite apt to decide in favor of the motion. That is the abuse to which the proceeding is subject. But that abuse is not comparable with the abuses, which would exist in the employment of unlimited debate, which in a large body like the House of Representatives would make the transaction of much important business impossible, except by a consent which would be practically unanimous.

The motion for the previous question may not fix a time for a vote in the future, but it must take effect immediately. The time for a vote in the future, however, is sometimes fixed by unanimous consent of the House. While it is the custom to recognize the right of a member in charge of a matter of business to move the previous question, yet, if he fails to make the motion, any other member will be recognized for that purpose.

For the purpose of preventing the complete stifling of debate, the rule provides that when the previous question shall be ordered, before there has been any discussion, forty minutes of debate shall afterwards be permitted. The very faulty practice has grown up of holding that, if there has been even a question and an answer, such a proceeding constitutes debate within the meaning of this provision, and sometimes, though very rarely unless during periods of notorious obstruction, this slight formality is indulged in by members who desire to cut off discussion.

Another very important result of ordering the previous question is that further amendments cannot be

offered and that the House proceeds to a vote upon the measure and pending amendments, unless it shall vote to recommit with or without instructions.

The ultimate object of legislation is to attain results, and these are accomplished by voting, but the importance of results has sometimes been exaggerated compared with the importance of the steps, which should properly precede action and make it wise when finally reached. No action at all is preferable to ill-considered action, and calm and deliberate argument is an important safeguard against motion in the wrong direction. A legislature, just as an individual, may be the victim of impulsiveness, if action precedes reflection. The right of debate in the abstract is one of the fundamental things in the constitution of parliamentary bodies. In our system of government the making and the enforcement of laws, the reaching of verdicts of juries, and the decisions of the courts are based upon discussion as an important step. But, like all other rights, and in a greater degree than most of them, that of debate is easily abused. Far too little talking in legislative bodies is really debate. To shine in speech is an inborn ambition and a very noble one if properly directed. But it has certain prerequisites. There must be some natural aptitude for it, and it should be safeguarded by general and special preparation and by restraint. One should not rely too much upon the possession of a golden mouth or a silver tongue. Not every one is able to reason and really to influence the judgments of those who listen, even when he does the best he is able to do; but it is more easy to get an immediate response by appealing to prejudice and

passion, and the temptation to reason, even where one has the faculty for it, is an easy temptation to resist. There is necessarily in a large legislative body, and for that matter in one that is not large, a great deal of empty speech-making — speech-making which, instead of shedding light upon the question at issue, throws it in eclipse — that uselessly consumes time and often commands no attention even at the moment. Mr. Speaker Reed had a contempt for the unnecessary exercise of the organs of speech. When he spoke, he would usually speak briefly. He would occupy the time of the House only for five or ten minutes, and during that time he would direct his formidable talent to the vital point of the issue and would illuminate the subject he was discussing. He did not regard with favor long discussions held under what is termed "general debate," when the House is operating under an order or agreement, providing that the pending question shall be open to long speeches for a given length of time, before it shall be debated under the five-minute rule. The almost invariable result of such an order is to give members notice that no business will be transacted during its continuance, and the chamber is left untenanted. It is a dreary scene that one witnesses on such an occasion, when he enters the chamber and sees a member delivering himself of impassioned periods before an audience composed chiefly of pages and doorkeepers. The remedy for all this lay in an unsparing use of the previous question; and the disposition to resort to it resulted, not merely from lack of sufficient time, but from a belief in the futility of a good deal of general debate. It is undeniable that during the

last twenty-five years discussion has been too much restrained in the House of Representatives. It has been limited altogether more than was necessary for the transaction of public business, and it has been limited also too much to secure the fair results of debate. But the limitations have always been by sanction of a majority vote of the members in each case.

When a member takes part in debate, the rule requires him to address himself to Mr. Speaker, and on being recognized he may speak to the House from any place on the floor or from the Clerk's desk. For a member to speak from the Clerk's desk is almost unknown. In General Butler's day he was once called to order by a member, who accused him of addressing the galleries. Thereupon, with characteristic audacity, he took his place at the Clerk's desk and proceeded with his speech. He was called to order for doing this, but the Speaker held that he was in order, as of course the rule made his right entirely clear.

The Speaker's right under the rules to discriminate with regard to recognition would appear to be confined to those cases, where two or more members rise at the same time, and in such a case he would have the right to name the member who was first to speak. A member may not speak in the House more than once upon any question without the consent of the House, unless he be a "Mover, proposer, or introducer of the matter pending, in which case he shall be permitted also to speak in reply when every other member wishing to speak shall have spoken." No member may address the House for more than an hour without special leave. Upon really important occasions leave is quite likely

to be granted when it is asked. Under the ancient practice, no limit was imposed upon the time which a member might occupy, and speeches of great length were often made. Mr. Gardenier, of New York, appears easily to have surpassed all other members and to have held the palm for the length of continuous performance. He is said to have addressed the House continuously for twenty-four hours. John Randolph, in the latter days of his service, was a frequent offender; and a long speech which he delivered upon the Missouri question was the occasion of an effort to restrict the right of a member to speak as long as he wished. The limitation of an hour was first imposed temporarily in 1841, and six years later it was definitely adopted in the rules. Mr. Benton, in his "Thirty Years in the United States Senate," laments in the most dramatic fashion the introduction of the hour rule in the House. The rule, however, was a necessity, for, even when members were innocent of any intention merely to consume time, it was found impossible in the increased membership of the House of Representatives to transact the necessary business without some limit upon debate.

Before a debate is entered upon, the exact question is stated to the House by the Speaker in the form required by the rules. If the subject under consideration is in the form of a bill or joint resolution, a rule, which in substance dates from the First Congress, requires it to take three readings. The first reading is simply by title; the second is in full for the offering of amendments, and the first question put to the House upon the main bill or resolution is, "Shall it be engrossed

and read a third time?" If the vote on this question is an affirmative one, it is read by title only, unless, as is rarely done, a member demand that it be read in full. After the engrossment of the bill or resolution, the next question is upon its passage. It is usual to have debate only upon the question of ordering to a third reading, although if the previous question has not been ordered, debate may also be had upon the passage.

The usual course of debate in practice is for the member of the committee, having the pending business in charge, to address the House, and then for some member of the committee representing the opposite contention to follow him, and then for members of the committee for and against the report to speak alternately in preference to the other members of the House. When no member of the Committee is ready to proceed for or against the report, then any other member may be recognized. Upon important bills it is usual for the House, by unanimous consent or by a special order at the beginning of the debate, to fix the time during which general debate upon the whole bill is to run before it is taken up for amendment. If there is great interest in the subject, the time agreed upon is usually too short to enable every member who desires to speak to do so, although sometimes members have little difficulty in securing the necessary time. It is a common procedure for the member in charge of the business, after the debate has been in progress for some time, to move the previous question. The debate would run on without limit under the hour rule if some one did not move, and the House did not vote, the

previous question, so that it will be seen that the House in any given case is responsible for cutting off debate. An adverse vote by the House upon the motion for the previous question, made by the member in charge of the measure, takes the control of it away from him and gives it to the member leading for the opposite contention, but as a rule a majority of the members are intolerant of debate, and it is quite unusual for the motion to be voted down. Sometimes by agreement the time for general debate is equally divided between the majority and the minority, the leading member of the committee upon each side having charge of half of the entire time and yielding such portions of it as he may choose to members supporting his contention. It is quite a common practice for a member, having charge of a bill, upon being recognized by the Speaker, to yield portions of the time which belongs to him under the rule to different members, and before the expiration of his hour to demand the previous question. While he usually yields to members opposed to his position, it is entirely within his discretion not to do so, and thus measures of considerable importance are sometimes, although rarely, considered without opportunity for a word of debate in opposition. This illustrates the most questionable procedure which may be followed in the House so far as debate is concerned. The word "debate" implies that the contentions for and against a proposition shall be presented, and the rules of any deliberative body where debate is an established institution should provide that there should always be a portion of time which might be consumed of right by members opposed

to a pending proposition, at least if any time were permitted to be used in favor of it. It must be said, however, in fairness to the House, that it would be likely to vote down the previous question, if the opposition had been denied a hearing.

The really effective debate in the House is that under the five-minute rule in Committee of the Whole, where clear-cut speeches are made to a definite point and where the interest in the controversy helps maintain order upon the floor, so that the members gathered together in the center of the chamber can as a rule hear with little difficulty. But it should not be inferred that the long speeches are uniformly uninteresting. Upon a really important occasion when the ablest of the members are addressing the House, general debate is sometimes full of animation and dramatic interest. In the discussion upon the income tax amendment to the Wilson tariff bill in 1894, Mr. Cochran, of New York, made a long speech of great eloquence in opposition to the proposal, and he was immediately followed by Mr. Bryan in reply. On the closing day of general debate upon the same bill, Mr. Reed made the argument in opposition to the measure in probably the longest speech, and certainly one of the ablest, that he ever delivered, and the case for the bill was closed by Speaker Crisp, who was a strong and incisive debater, and by William L. Wilson, one of the most fascinating orators who have ever served in either House of Congress. The rules of the House limit very strictly the right to entrance upon the floor and do not permit the Speaker to put a request for unanimous consent to have the rule departed from, but upon

this occasion by general acquiescence the House was open to the families and friends of the members, and the floor and the galleries were packed with a great concourse of men and women who heard one of the most notable debates of the present generation.

The conditions of debate in the Senate are much more favorable than in the House. There are not nearly so many members, and the disorder is therefore correspondingly less, while the chamber itself is much smaller, and it is rarely difficult for one to hear who really desires to know what is going on. The custom does not prevail in the Senate of allotting a fixed time for general debate, so that notice is not given that a considerable time in the future will be devoted exclusively to long speeches, — a notice that would result in the flight of the quorum. There is, however, ample opportunity for lack of attention when it is apparent that a speech, which is formidable chiefly for its length, is about to be made. Upon such occasions the same dreary scene is witnessed in the Senate which the House often presents in general debate.

But as I have said, the really important debate in the House is usually under the five-minute rule in Committee of the Whole. Sometimes the House adopts an order imposing a limitation upon debate before it resolves itself into Committee of the Whole, but as a rule it does not. There is very great freedom of debate in Committee, and it requires very little enterprise upon the part of a member to secure recognition for five minutes, and frequently this is extended by consent of the Committee to ten minutes, and occasionally to a longer period. The rule requiring debate to be con-

fined to the question at issue is pretty strictly enforced in Committee, and the short time allowed for a speech imposes the necessity of directness and a restraint in the use of language upon those who are capable of exercising it.

Sometimes debate is protracted upon a particular paragraph and amendments which are proposed to it, and in such a case the Committee may vote that further debate upon the paragraph and amendments shall be limited to a certain time, so that while it has discussion, it is also able to make progress in the transaction of its business. Interruptions are very common in debate, but the rule does not permit them unless the member speaking gives his consent through the Chair. While a member who is recognized to address the House for an hour may yield a portion or all of his time to other members, a member may not without consent yield his time during the five-minute debate in Committee of the Whole.

It is not in order in speaking in the House to refer to what has occurred in committee, unless the committee has formally reported its proceedings to the House. The House concerns itself only with the result of a committee's action and with the evidence that may have been taken and reported. The particular proceedings in committee that are obnoxious to the rule are those which relate to the personal attitude of members. If one member were at liberty to quote what another member had said, or to attribute to him some position upon a matter in controversy, personal differences would be endless.

Disrespectful allusions to the President are also for-

bidden, although it is necessarily in order to refer to him or to his opinions and to approve or criticize them, if the reference is pertinent to the subject under discussion. The practice is now much more liberal in this respect than it was in former times. When Mr. Macon was Speaker, he called a member to order for using the name of the President. The growth of liberality may be shown by a ruling of Mr. Colfax in 1868. Mr. Washburn was called to order for denouncing a message of President Johnson as a disgrace to the country and to the Chief Magistrate who had sent it. Mr. Colfax ruled that "this being a country of free speech, the Chair thinks that members who have been elected to represent the people of the United States have a right to criticize the conduct of those who are clothed with public trust, provided that it is done in language not indecorous or personally offensive." The same Speaker, however, had previously ruled out a scarcely more offensive remark concerning President Johnson made by a member in debate upon the impeachment proposition.

It is also out of order for a member in either House to refer to the proceedings in the other House. The rule is not enforced with great strictness, but sometimes action is taken in a flagrant case. The House of Representatives, in 1890, passed a resolution expressing its disapproval of a disrespectful reference to the Senate made in the speech of a member, and ordered that it be excluded from the permanent record. It is not in order for a member to mention another member by name or to indulge in personality, and this rule is enforced with greater strictness than

was the case prior to 1860. In former times there was a great deal of bravado, of "hurling back" insinuations into the teeth of the men making them, and much other brave talk of the same kind, but to-day that sort of practice, perhaps on account of the improvement in manners, is very little indulged in. When a member has violated the rules of order in debate, his words are taken down, and sometimes the House votes that he proceed in order, and sometimes it refuses to give him leave to proceed at all. In cases of extreme provocation the House censures the offender.

There is one circumstance which contributes towards making long speeches in the House as a rule not the most entertaining of performances, and that is the enormous size of the hall. It has nearly three times the floor area of the British House of Commons and is easily the largest of all the legislative chambers in the world. When there is a fair attendance of members, it is with difficulty that a member of ordinary voice can make himself heard throughout the whole chamber, even with the best of order. It does not always happen that a powerful mind and a powerful voice are combined in the same individual, and often the member with the real message cannot be heard, while the member with nothing to say has no difficulty in filling the chamber with sound. To contend with the vast spaces of the hall ordinarily requires an unusual physical effort on the part of the orator — an effort which is apt to be at a sacrifice of the due operation of the mind. This condition tends to develop a manner of speaking that is gladiatorial and declamatory, and it is not at all favorable to the conversational style so

suited to argument. The result is that the normal scene in a well-attended House, when long speeches are being made, is one of extreme disorder, and, except on occasions much too rare, the House does not strike the spectator in the gallery as an impressive body.

In addition to the size of the hall there is another circumstance that invites inattention to speaking when one does not particularly care to listen. The seat of each member is provided with a desk, and those who are not especially interested in the proceedings are very apt to engage in correspondence, and sometimes in franking documents and in the transaction of business of a routine character not related to the question before the House. All this serves to increase the disorder and imparts to the hall the appearance of a vast business office with its multitude of clerks, rather than of a legislative chamber of a great nation. Attempts have been made at different times to remedy this condition of things by removing the desks and by reducing the size of the hall, but thus far such efforts have not been crowned with success. During the past year there has been completed near the Capitol a great office building where each member is provided with a room in which he may have his secretary, conduct his correspondence, and transact business of a routine character. The result of this will be to render inexcusable the retention of desks in the hall of the House, and, with those removed, it will be easily possible to reduce the size of the chamber. This is something very vital to the efficiency of the House of Representatives, and it is not improbable that this step will be taken in the near future. At the first session of the

present Congress the House voted a sum of money for the preparation of plans for reducing the size of the hall.*

The House may accept or reject a measure in the precise form in which it is brought before it, or it may make changes of the most radical character. The process by which it perfects or changes the various legislative propositions is known as amendment. For the use of this process there is theoretically a very great freedom in the rules. It is in order to offer an amendment in the House to a pending proposition, and an amendment may be offered to this amendment and a further amendment in the way of substitute, to which an amendment may also be offered; that is, four motions to amend may theoretically be pending at the same time. These amendments, however, must all be germane. But, extremely liberal as the rule is, there are important limitations put upon offering amendments by the practice of the House and by the invoking of its other rules. There are grave practical difficulties in the way of proposing amendments which make the rule far less generous than it would seem. It is difficult often to secure the floor. The previous question, which is so frequently resorted to, has the effect of cutting off amendments, so that the right to offer an amendment in the House is of very little practical consequence, except

* This intolerable condition is about to be remedied. A law has been passed and the sum of $375,000 has been appropriated for rebuilding and refurnishing the hall. The floor area is to be reduced fully one-third and the cubical contents more than one-third. The desks of necessity must be removed.

to those members who are actually in control of a pending measure. A member in charge of a bill in the House may yield a portion of his time for purposes of debate, and, if he reserves the remainder of his time, he may again resume the floor. But if he yields to a member for the purpose of offering an amendment he loses the right to the floor. In Committee of the Whole, however, there is very great freedom of amendment, and, as the far greater number of public bills contemplate an appropriation or a charge upon the treasury directly or indirectly, they are considered in Committee of the Whole. There it is in order for any member to offer an amendment and to debate it. It is common, however, for the House to restrict the offering of amendments upon exceptionally important measures in Committee of the Whole, often limiting the right to those which may be proposed by the committee having the bill in charge. The limitation of amendment sometimes has for its object the saving of time, but often it is considered politically wise to have the House either accept or reject a measure substantially as a whole. This feature in the procedure of the House has at times been subjected to severe criticism, and the common view perhaps is represented by Mr. Harmis Taylor in an article which appeared in the *North American Review*. He instanced the Wilson tariff bill in 1894 and the Dingley tariff bill in 1897 as illustrating the rigor and the vicious nature of the House procedure as compared with the beneficent procedure of the Senate where the right of amendment is unlimited. Upon the Wilson bill there were some six hundred and forty amendments made by the Senate,

and upon the Dingley bill there was an almost equal number. These two instances by no means demonstrate the superiority in point of practical results of the Senate procedure. It will be remembered that the Wilson bill was passed by a Democratic House, and the multitude of Senate amendments so transformed the character of the legislation from that of a bill for revenue only to a bill for protection, that President Cleveland denounced it as a measure of party perfidy and party dishonor, and when the House was finally compelled to accept all the Senate amendments or have no legislation, Mr. Cleveland refused to sign the bill. And with regard to the Dingley bill, the duties in the House were round ones as a rule, but they were not so high that in some important particulars the amendments in the Senate did not make them still higher.*

A general tariff bill in this country is not merely an economic measure, but it is also a political measure. The usual course of things in the House is to refer the subject to the Committee on Ways and Means, which is charged with the duty of making an investigation and reporting a bill. This committee is preëminently the political committee of the House and that has been its standing ever since the organization of the government. The tariff bill is prepared in the first instance by the majority members alone, with the assistance of such experts and specialists as they may see fit to

* A similar result was witnessed in the Payne tariff bill of 1909. The Senate increased many duties over those fixed by the House and destroyed some of the most popular features of the bill.

employ. The measure, when it is finally brought into the House, is precisely analogous in character to a government bill of the very first consequence in Great Britain. It includes the most important substance of the budget, but the budget is only an annual affair, while with us a general revenue revision occurs perhaps once in a decade and is almost invariably the outcome of a general election. Within slight limits the work of the committee in the framing of such a bill is ordinarily acted upon as a whole. A general revision of the tariff, containing as it does a multitude of duties sweeping through the whole range of industry and production, would be peculiarly liable to vicious amendment if complete freedom of amendment were permitted. There would be a likelihood of a combination of disaffected interests. An important interest in a given locality might command the votes of the majority members of that locality, and these, combined with the votes of the minority members, might graft amendments upon the bill, and thus by a series of attacks on the part of the minority and a small portion of the majority it might be amended beyond recognition. This was well illustrated in 1868 when Mr. Schenck of Ohio brought in a revenue bill covering a great number of pages. It was repeatedly amended on the floor of the House, and its character was so radically changed that it represented the position of no individual or party and Mr. Schenck was compelled to move to recommit it to the Committee on Ways and Means.

A similar limitation of amendment upon government bills exists in effect in England, and it is certainly within

the proper function of a special rule to limit the right of amendment upon a bill of that important political character, affecting so many private interests and vital from the standpoint of national revenue. The unlimited right of amendment to such bills in the Senate is a valuable one to the special interests, especially where the Senate is somewhat evenly divided between two parties. In such cases it comes within the power of a very small minority of the Senators to insist on the recognition of the interests of their respective States, often out of all proportion to their just deserts and in disregard of the common interest; and the bill loses its due proportion, and instead of being a well-rounded measure, drawn upon national lines, it becomes a medley of special interests in which almost anything is reflected except a regard for the general welfare.

Revenue and appropriation bills are read in Committee of the Whole by paragraphs, and at the conclusion of the reading of each paragraph amendments are in order, but no amendment can be offered to a general appropriation bill, whether ordinarily it might be germane to the bill or not, unless it is for an expenditure authorized by law, except in cases where it is a continuation of former appropriations and of objects such as are already in progress; nor is any amendment changing existing law in order upon any general appropriation bill. These prohibitions likewise govern the committee in preparing the bill. The object of the prohibition is to prevent the practice once existing of putting "riders" upon the money bills. These bills provide for the support of the government for a given fiscal year, or for deficiencies in expenditures for previous

years, and it is their essential purpose to provide money for keeping the governmental machinery in motion. Amendments germane to these bills, dealing as they do with all details of government, might propose changes in the greater portion of the laws of the United States. If it were only necessary for an amendment to be germane, in the consideration of the Army and Navy appropriation bills, conditions might be imposed upon the use of those two arms of the service which might affect the whole foreign policy of the government. The departments of the civil service generally would be liable to a complete reconstruction every year, and even private claims might be pressed for payment upon general money bills.

The rules contemplate that changes in general laws shall be made by bills introduced for that purpose, referred to the appropriate committees, and considered on their merits in the House. Legislation of a general character, either by way of changing existing laws or by adding new laws to them, would be likely to be crude and unscientific, if added to supply bills, and it would have the effect, also, of impeding the passage of those necessary measures. There is no analogy between conditions with us and under those systems where, in former times, parliaments voted money to the king, only on condition that he should grant something to the people. In such a case the conditional grant was used to wring from the sovereign some of the privileges of a free constitution and an extension of popular rights. But with us the President himself holds office for a limited term, and under the same sanctions as do members of Congress; and he

may be retired at the next election and a successor chosen. The army and navy and the civil service do not belong to him but to the nation. And for Congress to attempt to coerce a coördinate branch of the government, by threatening to starve the departments and to stop the governmental machine by refusing to vote necessary supplies, savors very much of revolution.

The points of order are reserved when appropriation bills are referred to the Committee of the Whole, and by formally making the points at the proper time any provisions of general legislation, not admissible under the rules, may be thrown out in the Committee. In the same way, if amendments obnoxious to the rule are offered on the floor, they are excluded on points of order. Rulings upon what are or are not public works and objects already in progress are somewhat contradictory. By public works and objects in progress are meant tangible things, such as buildings, roads, and actual structures, and not the duties of executive officers. A work in extension of a submarine cable already completed is held not to be a continuation of a public work, while an appropriation to continue marking a boundary line is in continuation of a public work. A different practice applies with regard to building new ships and to increasing the enlisted force of the navy, and it is held that appropriations for such purposes are in order on the naval bill.[1]

Sometimes general legislation is enacted upon appropriation bills by what amounts to unanimous consent; that is, no member makes the obvious point of order necessary to exclude it, and the Committee votes in favor of the proposition. After the Committee

of the Whole has concluded the reading of a bill by paragraphs, it votes to rise and report the bill with the amendments, if any, to the House, which takes such action as it may deem proper.

And perhaps at this point as well as at any other I may refer to the manner of voting. After the consideration of an amendment or a bill is concluded, and the House or the Committee of the Whole votes upon it, the division is usually taken first by the sound of voices, and the Speaker, or the Chairman, decides whether the ayes or noes appear to have it. If any member is dissatisfied, he may demand a division, which is had by rising, and the Speaker, or Chairman, counts and declares the result. This may be verified by a vote by tellers which may be ordered both in the House and in Committee of the Whole by one-fifth of a quorum. In the vote by tellers one member is appointed from the majority and one from the minority — commonly the member leading for each contention. They take their places in front of the desk, and the members in favor first pass between the tellers and are counted, and those opposed follow them. The result is declared by the tellers and announced by the Chair, and then, when the proceedings are in the House, if one-fifth of the members present second the demand, the yeas and nays may be ordered. The names of members are called by the Clerk, and those who fail to respond upon the first call are again called, and after that no member may vote except when a call of the House is in progress. Sometimes the yeas and nays are demanded before any or all of the other methods of voting have been employed and, if they are ordered,

the vote is at once taken in that way. A member is permitted to change his vote, but not to withdraw it unless the House gives him leave. The rule requires all members to vote, but after repeated attempts to compel them to do so, when they have refused, such attempts were finally abandoned nearly three-quarters of a century ago. In 1832 the House refused to excuse John Quincy Adams from voting. His name was called and called again, but he declined to answer. After a long struggle the House abandoned its attempt to censure him.

When a question is being considered in the House, there are various motions which may be made in addition to those of which I have spoken. Among them are the motions to adjourn, to lay on the table, to postpone to a day certain, to refer and to postpone indefinitely. They have precedence in the order in which I have named them, and the first two must be decided without debate. These motions, with the exception of those to refer and to lay on the table, are often employed for purposes purely obstructive. One method of defeating measures is to vote to lay them upon the table, and it is held that if an amendment to a pending bill is laid on the table, the bill goes to the table also. In some legislative bodies the table is a place where the body puts measures which at the time it does not desire to act upon, but from which they are taken on a later day and are disposed of. But the table is in effect the scrap basket of the House of Representatives, and when the motion to table prevails, as a rule the proposition is defeated. But, technically, a bill laid upon the table is not always rejected, and a certain class of

questions have been taken from the table and acted upon, although such a proceeding is the rare exception. Questions of high privilege such as those relating to the seats of members, and a bill vetoed by the President and laid upon the table, have been taken up subsequently and disposed of.

The motion to recommit, which is in order just after the engrossment and third reading, is of great importance. Sometimes ill-considered measures which the House does not desire wholly to reject, but which it does not wish to pass in the form in which they happen to be, are sent back to a committee to be remodeled. But the more common use of this motion is for the purpose of securing a record vote upon a particular proposition. An amendment offered and defeated in Committee of the Whole is not reported to the House and a vote cannot be taken upon it. It is a common practice to embody the substance of one or more of such amendments in a motion to recommit with instructions and, if the yeas and nays are ordered, a record vote is secured. Occasionally members, who have voted one way in the practical secrecy of the Committee of the Whole where no record lingers, are too timid to vote the same way on the yeas and nays, and it has sometimes happened that thus the result of a division has been changed.

The motion to reconsider is an important one upon all questions which have been carried or lost by a close vote. The motion may be made on the day on which the vote to which it relates has been taken or on the next succeeding day, and it enjoys a high privilege. If the motion is not considered before the end of the succeed-

ing day, any member may call it up, but during the last six days of the session the motion must be disposed of at the time it is made. The motion may be made by any member who voted with the majority upon the division, although it is usual for a member to make the motion who was really against the contention of the majority. When it is known before the announcing of the vote what the result is to be, one of those voting with the minority changes his vote so that he appears of record with the majority, and thus he becomes qualified to make the motion to reconsider. Upon questions upon which the vote was not close, the motion to reconsider usually becomes merely a formal one. A member voting with the majority moves to reconsider and then moves to lay the motion upon the table with the purpose of destroying the right of reconsideration. The abstract technicality of the motions, which I have just been discussing, and their relative precedence would be of little general interest, but they are important weapons employed in the parliamentary battle in the House, and their skilful use often imparts intense interest to the struggle.

CHAPTER VIII

The Speaker

The central figure in the House of Representatives is the Speaker. Having in mind, doubtless, the somewhat ambiguous relations of the ancient Speakership to the Crown and to the House of Commons, the framers of our Constitution made that instrument declare that the House of Representatives "shall chuse their speaker and other officers." There is no requirement that the Speaker and other officers shall be members of the House. The "other officers" are invariably not members of the House, and there appears no reason to doubt that the House has no greater freedom of choice with regard to them than it has with reference to its Speaker; but no case has ever yet arisen where the Speaker was not chosen from the membership, and there is very little likelihood that there ever will be such an instance. Our Speaker does not bow three times to the chair which he is about to take, as does the English Speaker, in order to express his sense of the dignity of his office, but it is nevertheless a position not only of great dignity, but of great power, and indeed it may be said that its dignity would be greater if its power were less.

The power of the Speaker is chiefly derived from the circumstance that he is the organ of the House for the

performance of certain important functions. I shall attempt to set forth with some detail the exact character of these functions as they appear in the rules, illustrated by the practice of the House. They will show that the office is one of great power, but I fancy they will also show the exaggeration in a commonly held view, which was set forth in one of the national platforms at the last presidential election, that the Speaker "is more powerful than the entire body." I think it will appear that he is not an autocrat, that when he does not keep in line with a majority of the House he is not even a leader, and that the nature and extent of his power are very much misunderstood. The majority of the members can overrule his decisions; they can refuse to pass orders emanating from the Committee on Rules of which he is chairman and which have no vitality without their action; they can and they often do emphatically vote down propositions which he is known to favor, and they can remove him from his office.

The distinction between the character of our Speakership and that of the British House of Commons is fundamental. The British Speaker has been for centuries primarily a judicial officer, so far as the administration of parliamentary law is concerned. Although the House chooses its Speaker, the choice must be approved by the Sovereign. The power of disapproval, however, has become in effect a mere fiction, and it has been more than two hundred years since it was exercised. But in former times it helped make the Speaker subservient to the Crown. The House of Commons sometimes even contended for the physical possession of the Speaker.

The King once commanded that officer to adjourn the House without putting an obnoxious motion. The Commons refused to acknowledge this right in the King, but the Speaker did not dare disobey him. Two members thereupon seized the Speaker and held him in his chair while the protest of the Commons was read. In 1642 the Speaker assumed the rôle of servant of the House, and such he has since almost invariably been. He is usually a member of fairly respectable talent who has not been commonly known as a party leader, and, although taken from the ranks of the party in control of the House at the time of his first election, the almost unvarying modern practice has been to accord him a reëlection, even though the opposite party may have come into control. Only a single instance is recorded in the last century where a Speaker was denied a reelection on account of the changed politics of the majority of the House. But even in that case it was only asserted against him that he had not maintained his aloofness from party politics outside of the House. No charge was made that his action in the House had been at all political. The election of a member of the House of Commons to the Speakership makes his career secure and relieves him from the temptation to enter further political contests. He is given an official residence, an ample salary, and upon his retirement is raised to the House of Lords with a large life pension. His judicial attitude is further secured by a rule which prohibits him from voting except in cases where there is a tie, and he is not even required to vote in such a case. In practice he casts his vote so that, if possible, it may not involve final action, but may permit the House

again to act upon the question. He is not permitted to make political addresses to his own particular constituents, — in fact, he practically abdicates the lesser office of member of Parliament which is merged in the greater office of the Speakership. He has in some respects even greater power than our own Speaker. The rulings of the latter are always subject to appeal and may be reversed by a majority of the House, but the rulings of the British Speaker are final and cannot even be discussed by the House.

The essentially judicial character of the British Speakership had been well established at the time our government was set in motion, but it is not probable that the original conception of our own office was derived entirely from the imported model. In point of fact the authors of the Constitution were thoroughly familiar with the Speakership in our different state and colonial assemblies, and they knew that it could not be considered as essentially a judicial office. They knew that the colonial Speakers were in a high degree political officers. They represented the assembly, the people as against the King, and with men like Randolph and Otis among these Speakers they scattered the seeds of revolution. They were also familiar with the office of president of the Continental Congress, who enjoyed great prestige from the fact that he was the highest officer of the government and was its regular agent in communicating with the States, the army, and our diplomatic officers abroad. But he exercised little authority as a leader, and in his capacity as a presiding officer he seems to have been a mere moderator. Thus when the fathers established the Speakership they were ac-

quainted with Speakers who were political and Speakers who were ceremonial and judicial.

But whatever their conception of the office, they established a Speaker with no limitation upon his power, and they left a freedom of development entirely without restraint. The office almost immediately assumed features of a political character, and it entered upon a very definite development in the direction of political leadership. But it should be said that it was not then, and it has never subsequently been, contemplated that the Speaker was in the slightest degree emancipated from the obligation to maintain impartiality while presiding over the House.

As parties more definitely developed, the office gradually grew more and more political in character, and the natural selection for it was one of the real leaders of his party in the House. A scrutiny of the names of those who have held the office will show clearly the idea which soon became predominant in the selection of the Speaker. As a rule, for nearly a century, they have been among the most masterful men belonging to the majority of the House. Sometimes there would be a deadlock in the caucuses of the parties; sometimes the strongest man could not command a majority, and a compromise candidate would be chosen, but beginning with the time of Henry Clay and tracing the names of the holders of the office from that day, — among them Polk, Winthrop, Cobb, Banks, Blaine, Randall, Carlisle, and Reed, — it will be seen that the choice has usually fallen upon one of the foremost men of his party in the House.

The cause of the development of the office in a politi-

cal direction would not be difficult to discover, even if it had been the primary intention to make it a judicial office. Under the British Constitution the cabinet officers are members of one House or the other of Parliament. They include among them the leaders of the dominant party in the House of Commons, the support of which is necessary to the continuance of any ministry in power. The men who conduct the government and who have the responsible initiative and the leadership in the House of Commons, being members of the Cabinet from which the Speaker is excluded, there is no necessity, and indeed no opportunity, for the growth of a political Speakership. Such an institution would be out of harmony with their cabinet system. But in America a very different system prevails. The executive and the legislative departments are entirely independent, except in a few specified particulars. A member of either House of Congress is prohibited by the Constitution from holding any other office under the United States, and cannot, of course, be a member of the Cabinet. The executive power is vested in the President, and his cabinet officers are merely his agents for the exercise of his constitutional powers, — a species of splendid head clerks, responsible to him, and acting primarily with a delegated authority. In England the real executive power is lodged, not in the Sovereign, but in the Cabinet; in the United States it is lodged not in the Cabinet, but in the President. If members of our Cabinet were permitted to participate in the proceedings of the House, it could be only for debating purposes, as they could not vote, and they would not constitute the real executive, but only its agents upon the floor. While it may

be doubted whether a union of a mere agency of the President with the right of only talking would form an impressive basis for the establishment here of a system of modern cabinet government, the adoption of the experiment would at least have a decisive effect upon the character of our cabinet appointments. In recent years, whatever may be said of their administrative talents, they have not as a rule been men who could maintain themselves as leaders in any important parliamentary assembly.

Thus, since there was no executive officer upon the floor of the House, and since there could be no leader except the one chosen in one way or another by the House itself, it was entirely natural that the leader should be the member who held the highest office, and so it has come about that the selection of Speaker has been particularly with an eye to political leadership.

Unlike the English Speaker, our Speaker's functions as a representative are not swallowed up in his office, but he retains, and upon occasion exercises, all the powers vested in him as the representative of a particular constituency. He not merely votes in the case of a tie, but he votes often when there is no tie. In one recent notable instance the Speaker, Mr. Reed, who was absent and had designated another member to preside, caused him to announce that the Speaker if present would vote against the resolution, at the time being considered, for the annexation of the Sandwich Islands. The rights of the Speaker as a private member were perhaps exploited a trifle when Mr. Colfax, of Indiana, left the chair and dramatically moved the expulsion of a member from Ohio, which act he said he did from

a sense of duty to his own constituency. But this spectacular display of goodness and virtue was only an extreme exercise of a Speaker's undoubted right.

He has the same right of speaking which belongs to a member, but only when he leaves the chair and addresses the House from the floor. This right is exercised far less frequently to-day than in the past. Henry Clay, when Speaker, was very much addicted to the habit of addressing the House. It is said that he made thirteen speeches in a single session. Some of his successors have imitated his example, although they do not appear to have equaled him either in the volume or the quality of his speaking. The Speaker, also, as a private member introduces bills and petitions.

In one particular it may be said that the power of the presiding officer is merged in that of the individual member. Many measures are brought before the House upon a request for unanimous consent for their immediate consideration. The Speaker, when he sees fit to do so, recognizes a member to make the request. He is subject to a great deal of importunity for recognition for this purpose, but for many years Speakers have been disposed to base their refusal to accord such recognition upon the ground that a given measure was one which they themselves would object to as a private member, and that they were in effect only exercising their rights as representatives in refusing. Probably they have been denounced more bitterly by their fellow-members, and have won a larger measure of unpopularity, on account of their failure to accord this recognition than upon any other single ground.

In 1887 a member, who had been refused recognition

to call up a bill for a public building in his district, is said to have made, in front of the Speaker's desk, a demonstration which lasted for two hours, and finally, failing to secure recognition, to have torn up his bill and thrown its fragments at the Speaker's feet. It may well be doubted whether this violent performance ever in fact occurred, but it has been gravely cited by a very intelligent writer to demonstrate the autocratic character of the power of the Speaker in the time of Mr. Carlisle.* If a member were permitted to take forcible possession of the House and secure recognition in such a fashion, it scarcely becomes necessary to ask what would become of the rights of other members to have similar bills considered, or to call up measures of general importance, the passage of which might be necessary to maintain the government? The House, indeed, would be a pitiful national assembly, and sadly in need of an autocrat, if its order of business could be fixed by such demonstrations.

In the Fifty-fourth Congress, under the Speakership of Mr. Reed, a Populist member from Nebraska became aggrieved at something in the proceedings of the House, and he announced that he would object to the consideration of any bills by unanimous consent. The Speaker's room was thronged as usual the next day by members requesting recognition, which in several instances he consented to accord. When a member would make the request and the Speaker would present it to the House, the member from Nebraska in each case would object and as effectually prevent the passage of

* "The Speaker," by M. P. Follett, p. 265.

the bill, as if the Speaker himself had refused recognition. The same proceedings in effect were enacted upon the next day, and upon the next, and then, instead of the suppliants for unanimous consent crowding into the Speaker's room, they were seen surrounding the desk of the member from Nebraska, asking him not to make objections to their requests. The Populist member had succeeded in establishing himself as the autocrat of the House, and the importunity was transferred from the Speaker to himself, and, as Mr. Dalzell remarked, "The business of the House then proceeded under the regular order established by the rules." Where unanimous consent is required in a legislative assembly, obviously any member can establish himself as an autocrat. In that regard the presiding officer certainly has no monoply.

It should be said, however, that the Speaker usually exercises much care in according recognition for requesting unanimous consent. The average member commonly does not wish to object to the request. He does not feel called upon to disturb the unanimity of a large assembly and appear ungraciously to be preventing the passage of a fellow-member's bill. But the Speaker, with an initial responsibility placed upon him alone, usually scrutinizes the bill and the committee's report upon it, and in case of doubt he sometimes refers them to a member, in whom he has confidence, for a more careful examination than he himself has time to give. It would naturally be supposed that legislation would be above reproach which passed by unanimous consent. But, on the other hand, very bad bills sometimes pass without objection, when no one feels charged with a particular

duty. And were it not for the Speaker's caution, much more vicious legislation would be enacted in this manner.*

The Speaker has the ordinary powers that go with the office of president of an assembly. He takes the chair at the moment of the assembling of the House, calls it to order, and causes the journal of the previous session to be read, having first examined and approved it. He has the duty of preserving order, and may cause the galleries to be cleared on account of disorderly conduct. He signs acts, addresses, and resolutions passed by the House, also warrants and subpœnas issued by its order, and even certifies the monthly pay vouchers of the members. He accords recognition to members desiring to call up business, to make motions, or to address the House. He decides all points of order subject to appeal, puts all questions to the House and announces the results, subject to a demand for verification upon a rising vote, or a vote by tellers, or by a call for the yeas and nays. He is paid according to the somewhat low scale of salaries prevailing for important offices in this

* Since the above was spoken, the practice in recognition for unanimous consent has been changed. On March 15, 1909, the House adopted a rule establishing a "calendar for unanimous consent." After any bill, other than a private bill, has been favorably reported and upon the House or Union calendar for three days, it is put upon this special calendar upon notice by any member. The unanimous consent calendar is called after the reading of the journal upon suspension days, and, if any measure when called is objected to, it is stricken from the calendar and may not be put upon it again. This rule relieves the Speaker from much importunity, but it has not been in force long enough to indicate what effect it may have upon the character of legislation. Many of the bills, which would otherwise be taken up by unanimous consent, are now reached under the call of committees.

country. He has no official residence, and he receives twelve thousand dollars a year, which is about half the salary of the British Speaker.

The most important prerogative which the rules confer upon him is that of naming the committees of the House.* While the exercise of this power, of course, requires fairness, it is not a fairness of a purely judicial quality, but has much that is essentially political in its character. The committees are given a bi-partisan organization to correspond generally with the political distribution of the membership of the House, and the Speaker upon his responsibility as a party leader selects the majorities which are to shape legislation upon the important, as well as upon the unimportant, committees. This certainly is a great power, but it is exercised in the presence of the House itself and almost immediately after a majority of the House has chosen him as Speaker, and, as he receives credit for good appointments, it is impossible for him to escape responsibility for bad ones. As a rule, the committees, appointed as they are under this sense of direct responsibility, fairly represent both the majority and the minority. The Speaker retains no coercive power. It should be remembered that a member is appointed to a committee at the beginning of a Congress, and he remains upon it, if he wishes, until the Congress comes to an end. The fact that the Speaker appointed him may give the former a claim upon his gratitude, but that is not often an animating principle in politics, unless we accept the definition sometimes given that it is a

* In the Sixty-second Congress the standing committees are to be elected by the House.

lively sense of favors to come. It has been charged, although rarely, in past times that the Speaker appointed weak members of the minority upon the great political committees, so as to put that party at a disadvantage with his own. It is doubtful whether there was ever any fair foundation for this charge, but under the practice inaugurated by the present Speaker, Mr. Cannon, the minority members are in effect selected by the minority leader. The Speaker requests the member who is nominated by the minority as its candidate for Speaker, and who is its titular leader, to make the nominations of the minority members to the committee places, and almost invariably he has followed the recommendations thus made. As a rule, the committees are fairly representative of both parties in the House.

The exercise of a function, which deals so directly with the ambitions and the personal claims of members, will inevitably be followed by criticism and in some cases by resentment. Where many men are seeking the same position, not everybody can be satisfied, and in some instances the Speaker doubtless incurs hostility on account of the exercise of this power. It is doubtful whether on the whole the power greatly augments his influence with the members. The House at one time adopted the method of electing its committees, but that method was very speedily abandoned and has never since been employed. The appointment of committees is a function that can better be performed by a responsible single agent, acting in the presence of those who have chosen him and who are immediately concerned. There can be an altogether better weighing of

the fitness of an individual for a given place, a more single view of the important questions likely to devolve upon particular committees and the qualifications to meet them, and a fairer balancing of the claims of different States and sections. Much better results are likely to follow from this open method, with a concentrated responsibility, than would be possible through appointment by a committee, which has been so often proposed. With a committee of the usual size sitting behind closed doors, with responsibility dissipated among a dozen or more members, each one of them distracted by personal importunity and the demands of his own locality, which he ordinarily could not resist, a result would be reached, of which no single member of the committee would be likely to approve. Combinations between members and between groups of States would be inevitable. It is true that in the Senate there is a committee for selecting committees. But with the expiration of each House there is no committee membership, and every one of the nearly four hundred members has to be appointed. In the Senate not more than one-third of the members, or thirty-one at the most, can lose their places through failure of reëlection, and the problem of appointing committees is far less complex and difficult than in the case of the House. But even with the much simpler problem, the results attained by the methods of the Senate have been unsparingly criticized.*

* The recent action of the caucus of the democratic members-elect foreshadows the resort to a committee on committees in the Sixty-second Congress. Although the standing committees are nominally to be chosen by the House, that action will be merely formal as the lists are made up in the first instance by a committee and ratified by a party caucus.

By no means the least of the Speaker's powers are those in which he shares as chairman of the Committee on Rules, which is composed of five members. The Speaker's two party associates are always men of conspicuous standing in the House. The present Republican members are Mr. Dalzell and Mr. Sherman. Of the two Democrats the one is the leader of his party in the House, and the other is a prominent figure.

I have already spoken of the jurisdiction of that committee. When any emergency arises in the conduct of business, it is within its province to report at any time and to call up for immediate action a special rule or order which will deal with the situation. Its authority in this regard, however, is limited to giving the House an opportunity to adopt or to reject the proposed rule. It may likewise bring in at any time orders giving the right of way to particular measures, fixing the time and conduct of debate, limiting the right of amendment, and, in fact, dealing with any part of the procedure of the House: but here again its propositions require the approval of a majority of the House, in order to become effective,* and it must be remembered that, important as these powers are, they are for use in emergencies. Sometimes for months in succession this committee has been entirely inactive.

The Speaker's prerogative of recognition is a very important one, although it by no means has the effect of determining even in large measure the course of the business of the House. The order of business is established by the rules, and he has no discretion with regard

* By an amendment to the rules the Speaker is no longer eligible to this committee. It is now elected by the House, and its membership has been increased to ten.

to following them. The reasons for the establishment of this order have been already given. When a member, having it in charge, rises to call up one of the great appropriation bills, and there is no matter of equal privilege before the House, the Speaker has no alternative but to accord recognition and to put the motion to go into Committee of the Whole. If the House votes to go into Committee, the Speaker leaves the chair and does not preside while the bill is being considered. These bills, especially at the short session of Congress, occupy more of the time of the House than all other bills combined, and, with regard to the recognition of a member to call them up, the Speaker has no discretion. Then there are other bills of a privileged character upon which, whether he desires to do so or not, he is compelled to accord recognition. After the privileged bills come the bills upon the House calendar which are entitled to consideration in the morning hour. If there are no privileged bills, it becomes the duty of the Speaker to call the committees alphabetically and the chairman of the committee called is entitled to recognition.* In addition to that, there are special days assigned for particular kinds of measures. Upon every Friday the bills upon the private calendar are in order, and upon every other Monday business relating to the District of Columbia, and, unless questions of higher privilege are presented to the House, it becomes the duty of the Speaker to accord recognition to measures of that character. There is another class of bills of a public nature imposing a charge upon the

* Under the rule of 1909 the committees must also be called on every Wednesday unless two-thirds of the House vote otherwise.

Treasury which are upon the Union calendar. At the end of the morning hour, if a member makes a motion to go into Committee of the Whole for the consideration of such bills, it is the duty of the Speaker to entertain the motion. When a majority of the House is determined to pass a given bill, it is within its power to reach it, in spite of all privileged matters with the opposition of the Speaker added. Any member can object to unanimous consent; can raise the question of consideration against any bill whether privileged or not, and, backed by a majority of the House, can vote it down; can move to take a recess instead of adjourning, and thus retain the progress he has made, and can pursue this policy until the desired bill is reached. Mr. Reed was a strong man with a strong will. No Speaker ever liked better to have the business of the House proceed on the lines he thought it should follow. And yet the celebrated resolution annexing the Sandwich Islands, which was without privilege and had his determined opposition, was forced to its passage.

The first and third Mondays of every month and the last six days of every session are suspension days, when the Speaker may recognize members to move to suspend the rules and pass measures. These are the days upon which he has the only really important discretion in according recognition. Bills called up by this motion require a two-thirds vote in order to be passed. It will thus be seen that the discretion of the Speaker, with regard to recognition of a character which practically gives him the responsible initiative, is in connection with a motion to suspend the rules, which can be made only upon two days in a month and the last

six days of the session, and which requires a two-thirds vote in order to pass. The famous letter, written by Speaker Carlisle in 1887 to Mr. Randall and other members of his party, has often been referred to as an example of the autocratic character of the Speaker's power of recognition. Mr. Randall and his associates had asked Mr. Carlisle to recognize a Democrat to move to suspend the rules and to permit the House to consider the repeal of the internal-revenue tax upon tobacco, and had expressed the opinion that a large majority of the House would vote for the repeal. There was at the time a large surplus revenue. Mr. Randall was a protectionist Democrat and wished to reduce the surplus by repealing the internal-revenue taxes. Mr. Carlisle, on the other hand, was a tariff reformer and wished to make the necessary reduction by changing customs duties. Mr. Carlisle took the ground in his letter that it would not be proper for him to agree to a course which would present to the House a bill to repeal the tobacco taxes, to the exclusion of all other measures for the reduction of taxation. He also called attention to the fact that Mr. Randall had not accepted the proposition to submit the entire subject to a Democratic caucus. Mr. Carlisle's reply was simply that of a party leader in the Speakership, but as an illustration of the scope of the prerogative of recognition it must be borne in mind that the recognition asked for was only for a motion to suspend the rules, of the limited application of which I have just spoken.

The power of the Speaker to declare business in order or out of order is always subject, as I have said, to appeal and to reversal by a majority of the House. The criti-

cism of the general procedure of the House is often directed against him, and he is held responsible for a condition of things brought about by the rules. Theoretically, each one of the three hundred and ninety-one members of the House is the equal of every other member, but if our system gave to any member who should first rise in his seat the right of recognition to call up a particular bill without reference to its character, we should have a most haphazard system, and it would be impossible to maintain the government of the United States. The reasons for according privilege to certain measures, I have given elsewhere.

There is a confusion in the general mind between the power of the Speaker, as seen in the prerogatives of his office, and the influence he exerts as a party leader. This influence is personal and, of course, depends very much upon the characteristics of the man. A weak man in the Speaker's chair would not long command the support of his own party and would be regarded generally as anything but an autocrat. On the other hand, a Speaker, who is a real leader of men, will exert a more potent influence upon legislation by his personal qualities than by the exercise of the powers of the Chair. Such a man would wield a powerful influence upon the floor, and our history is not without instances where the real leader of the House was upon the floor, notwithstanding the power of the Chair. The Speaker will keep himself in touch with the President, with the leading Senators and the heads of departments, and he will aim to know whatever at the moment is necessary to the efficiency of the government and vital to the welfare of the country. He will be in conference con-

stantly with the leaders of his party upon the floor, and, largely as a result of his efforts, a unity of action will be promoted among the different branches of the government. His authority as a leader, joined with the elevated character of his place, will contribute strongly to secure some of the practical benefits of the cabinet system.

There is a species of work in the nature of parliamentary management, which is not exactly political leadership and is very necessary to be done in the House. This naturally falls to the Speaker under our system. There are many appropriation bills to be passed each year which are distributed among a half-dozen committees. These committees working independently might not report their bills at times, which would harmonize with a general scheme for the business of the House during the session as a whole. By keeping in touch with the different chairmen the Speaker aids to bring about a concert of action, so that the reports upon these bills may be properly distributed and sent to the Senate in time for action before adjournment. It has come about, also, that the general program of legislation is laid out by the Speaker, so that when many important measures must be acted upon there is always some one of them ready to be considered by the House. And almost invariably, also, he is consulted in advance with regard to the calling up of business outside the general routine. This important task of supervision, of keeping the House occupied, and of proportioning the work of the session has quite naturally fallen to the Speaker.

Among the many curious criticisms of the Speaker

is one to the effect that the custom of going into Committee of the Whole enables him to influence legislation in two ways, because, during the consideration of nearly all important measures, he leads his party on the floor, and "at the same time that he is leading his party on the floor, the House is being guided by the man he puts in the chair, presumably one who will handle measures as he wishes." However it might have been in Henry Clay's time, this criticism strikes one familiar with the procedure of to-day as very unreal. When the House is in Committee, the Speaker is usually not in the hall, and it is probably true that in a score of years he has not addressed the Committee on an average once in each Congress. As to the complaisant Chairman, he is usually guided by the man who guides the Speaker, the accomplished parliamentary clerk who stands at the right of his desk.

It may be that the powers of the office, aside from those of a moderator, could be more safely and effectively exercised in some other way. But that those powers must be exercised by somebody, there can be no doubt, and whoever he may be he will certainly be visited with denunciation. So far as criticisms of the Speaker are based upon the existence of the powers, rather than upon the manner of their exercise, they involve a species of parliamentary anarchy, for there is no one of them which at critical times is not vital to the efficiency of the House and to the transaction of its business. The fact is that Speakers are by no means always trying to shape the action of the House, and when they do try to lead, they sometimes fall painfully short of the success that one would expect of a dicta-

tor. The present Speaker is from long habit rigidly sparing of the public money, and repeatedly when he has been believed to be hostile to an appropriation, it has been voted in the bill. General Henderson was a strong and popular Speaker, and yet upon the Cuban reciprocity bill, which was a leading administration measure and one which he earnestly favored, he was disastrously beaten, although his party had a very considerable majority in the House. No Speaker, not even Mr. Reed, could lead the House where it did not wish to go.

Henry Clay, when Speaker, was charged with responsibility for the War of 1812. If the charge were true, it was probably due less to the use of the powers of his office than to the employment of his talent for political leadership, and in any event the power was not of a very decisive character, because the war was carried by only one majority. Clay would have been the leader beyond question, whether in the chair or out of it, unless during the Congresses of which Daniel Webster was a member; and the fact that he was Speaker did not add greatly to his power in this respect. The predominance of the House in the government of the country during Johnson's administration resulted rather from the leadership of Thaddeus Stevens upon the floor than from the influence of Speaker Colfax. Like Clay, Blaine, while Speaker, became the leader of his party as well as of the House. He accomplished this result largely through his brilliant personal qualities combined with a clever use of the powers of the Chair. He probably would have led the House from the floor, although it required the use of all his resources, both

personal and official, while in the chair, to manage General Butler.

No greater Speaker ever held the office than Thomas B. Reed. He added greatly to the efficiency of the House by rulings which seemed at the time almost revolutionary. Unlike Blaine or Clay, he had received a thorough legal training and had established himself as an able lawyer before he became a member of the House, and he had little difficulty in mastering both the letter and the philosophy of the law of the House. His rulings are unsurpassed by those of any of his predecessors for solidity and strength. His reversal of the practice of a hundred years, in the ascertainment of a quorum from the number present rather than from the number answering on the roll-call, required courage of the most heroic character, although his course was hotly ascribed rather to partisanship than to courage. And it was a triumph such as rarely comes to a public man when, only four years afterwards, he witnessed the spectacle of his political foes formally accepting the principle, for the establishment of which he had received their unsparing denunciation. Except when dealing with burning party questions, his ready wit served to keep the House in good humor. He was a stickler for the rules of order, and he was quite apt to be the more severe to those who were his immediate friends. It is doubtful whether, in any of his three Speakerships, he ever addressed the House or the Committee of the Whole as a private member. But he performed to the full the duties of political leadership which according to tradition went with his office. It is perhaps a fair criticism to say that, during his regime, debate and

amendment were too much restricted by the use of the previous question.

Much of the denunciation of Speakers is a part of the stock rhetoric of minorities, and is passed on by one minority to another. Of course there will always be a few sensitive spirits whom it is impossible not to hurt; there will be others who take an exaggerated view of the importance of their own pet measures or of their own capacity, and who think they should have a freer hand in directing the business of the House; and undoubtedly there are also those whose really valuable work is brought to naught in the hurly-burly of a great assembly, and who have a genuine grievance; but as a whole it is open to question whether any juster system could be adopted for managing the business of a great body like the House. A managing committee has been suggested, but it is as easy to criticize a committee as a man, and much more difficult to locate responsibility. The Committee on Rules, for its special intervention upon occasions, is subject to even more rancorous abuse than is leveled at the Speaker himself. Leadership is something that cannot be put in commission; it must be centered in some individual who will act, bearing the full burden of responsibility. That is the system in every great parliamentary body in the world. Even a directing Cabinet must have a leader. The political power of the Speakership might be lodged in the chairman of the Committee on Ways and Means or in some other member, but by whomsoever it may be exercised it may be accepted as a certainty that he will not escape vituperation. It is possible that time will disclose a wiser solution. But the result that we see

to-day has come about from the steady growth of nearly a century and a quarter of parliamentary experience, and the slow growth and development of a political institution must be reckoned with, even by those who believe in the superior efficacy of theories and political inventions.

At times when partisanship rankles, the Speaker is the central object of attack. At the end of the Fifty-first Congress no Democrat would offer the customary vote of thanks to the Speaker on account of the irritation of the members of that party over the quorum-counting incident; and when the Republican floor leader, Mr. McKinley, made the motion, the Democrats demanded the yeas and nays and went on record against it. And yet we have seen the necessity for the ruling of the Speaker, and that it has since become a fundamental part of the law of the House. And in a later Congress Mr. Reed himself, then the minority leader, was unwilling to offer the motion of thanks to Speaker Crisp on account of an extraordinary personal reprimand which the latter had administered to him, and when the motion was made by another Republican and a rising vote was taken, Mr. Reed remained in his seat. Such incidents are inevitable where political passions are aroused, and the greatness of an office confers no immunity.

The Speaker, in point of political consequence, is the second officer under our system, and in the field of legislation he ranks easily first. When he is a man of political talent of the first order and of popular qualities, he becomes a commanding figure in the country and performs the salutary function of helping to preserve the balance of power between Capitol Hill and the

White House. The real power of the office, compared with the ornamental character of the vice-presidency, seems to explain, in part at least, the higher estimation in which the Speakership is held by a practical people. And it must be said that during a hundred years the office has been generally representative, not merely of a majority of the House, but of a majority of the people.

CHAPTER IX

Special Procedure of the Senate. Conference Committees

Filibustering has played little part in the development of the rules of the Senate. That has not been for the lack of filibustering of the most vicious character, but because it has not been permitted to have the legitimate effect which it should have upon the procedure of any great legislative chamber in a representative government. The constitution of the Senate is so undemocratic, there is such a grotesque disparity between the constituencies which exercise an equal voice in the selection of its members, and again the choice of these constituencies, such as they are, is so vaguely expressed in its filtration through the action of agents selected chiefly for other purposes, that it is only in a very remote sense a representative national assembly at all. It is not, therefore, to be wondered at that, with such a constitution, reverence for a majority should be one of the least sacred of its inspirations; and that, after argument had been exhausted over and over again, the right of debate should often be insisted upon by a minority, and sometimes an extremely small minority, for the purely physical purpose of delay and to prevent a majority of the Senate itself from recording a verdict.

In the early days the Senate sought to increase its importance by enveloping its proceedings in an air of mystery. It withdrew itself from the gaze of the populace and transacted its legislative as well as its executive business in secret sessions. Its members strutted about in purple and sought to emphasize by their conduct and appearance the awful dignity of their office. But these mummeries were soon dropped; it was determined that its business, except that of an executive character, should be carried on in public; the members demeaned themselves like ordinary mortals, and the body acquired the real dignity to which the nature of its functions and the character of its members entitled it.

The manual of Mr. Jefferson was prepared especially for the Senate when, as Vice-President of the United States, he was its presiding officer, and it has continued to be a practical chart for its guidance. It is much more relied upon in daily practice there than in the House of Representatives. When the Senate meets at the beginning of a new Congress, unlike the House, it is already organized. In fact, it has maintained its organization continuously since the first Congress, with of course a multitude of changes in its officers during the intervening years. The quorum of the Senate, as of the House, is fixed by the Constitution as a majority of the membership. In the First Congress great difficulty was met with in securing a quorum. Eight Senators came together on the 4th of March, and, after waiting for a week, they joined in a letter to the absent Senators, requiring them to attend. In the Fifth Congress, instead of directly writing to the absent members, those who were present ordered the secretary to write requesting

them to attend. The rule as it now exists is much less gentle, but it is not so summary as the corresponding rule in the House. It provides that, when it shall be ascertained that a quorum is not present, a majority of the Senators present may direct the sergeant-at-arms to request and, when necessary, to compel absent members to attend. The rule makes it in order also for a Senator at any time to raise the question of the presence of a quorum, and a Senator is often interrupted when speaking in order that this point may be made. This right is sometimes used for purposes of delay, but sometimes also for the purpose of forcibly securing an audience.

The Vice-President of the United States is the presiding officer of the Senate. He is not a member of the body, and exercises as little authority under the rules as the presiding officer of any legislative chamber in the world. The source and extent of his powers have long been a subject of controversy. In 1826 Mr. Calhoun, who was then Vice-President, expressed the opinion that he had no authority to call a Senator to order for words spoken in debate. The rules at that time in force had not been changed since their adoption by the First Congress. Mr. Calhoun's position led to a proposal to change the rules, which was the subject of a long debate. The leading Senators took the position that such power as the Vice-President possessed he derived from the rules of the Senate, and that, although the Constitution made him the presiding officer, yet in conferring on the Senate the authority to adopt rules, it left with that body the power to determine the nature of the powers which the Vice-President, as its presiding officer, should exer-

cise; on the other hand, if the Vice-President had any inherent power derived from the Constitution, he would possess it free from any control by the Senate, and would, therefore, be the exclusive judge without appeal upon questions of order. Mr. Hayne, among others, urged this position very strongly. The rules were amended in 1828, recognizing that a Senator might be called to order by the President of the Senate, or by a Senator, and providing that every question of order should be decided by the President without debate, subject to an appeal to the Senate, and also that the President might call for an expression of the opinion of the Senate upon every question of order. But even with the authority at least impliedly conferred upon the President to call a Senator to order, it does not seem to have been generally accepted, and in 1850 we find the President expressing of his own motion a formal opinion that the President had the right to call a Senator to order for a violation of the rules.

The view that the Vice-President had any authority over the Senate which he did not directly derive from the rules of that body has never been received favorably by the Senate. The House is presided over by one of its own members, selected by itself, and the Senate by one who is not a member, selected by an outside authority; and it is probably due to this circumstance that we have at one end of the Capitol the most powerful, and at the other end the least powerful, presiding officer in the world. The Vice-President scarcely exercises the powers of a moderator, and in no sense is he a political leader, at least so far as the action of the body over which he presides is concerned. He might, of course, be one

of the leaders of his party in the country. Since the House chooses its Speaker, we have seen how almost inevitably it selects one of the strongest men of the majority to preside; but as the Senate is not consulted in the choice of its presiding officer, he may, or he may not, have qualifications of leadership. While some great men have held the office of Vice-President, some also have held it who would not be capable of exercising political leadership in any legislative body.

Ordinary business, so far as parliamentary questions are concerned, runs very smoothly in the Senate, and the chief qualifications of its presiding officer are the ability to occupy the chair with dignity, and a readiness in the transaction of the routine work of the body. If points of order are raised upon important or doubtful questions, they are quite apt to be submitted to the Senators for their decision. The prime quality of a Vice-President is the ability to represent the dignity of the body over which he presides.

An important difference between the Senate procedure and that of the House consists in the fact that the former body retains its morning hour, and, when the hour was found to be too short in 1888, it adopted a resolution, formally declaring that until otherwise ordered the "morning hour shall terminate at the expiration of two hours after the meeting of the Senate." This hour of one hundred and twenty minutes is sufficiently long for the transaction of a great deal of business. During that time the presiding officer lays before the body messages from the President, communications addressed to the Senate, bills and resolutions, and messages from the House of Representatives. Petitions

and memorials are presented in open Senate during this elongated morning hour, reports of committees are made, and bills and resolutions are introduced. But a recent amendment of the rule permits petitions and memorials and bills of a private character to be introduced, as measures are generally introduced in the House, by delivering them to the Secretary of the Senate, and much time is saved by this simple procedure. Business is also transacted during the morning hour by unanimous consent. At the conclusion of the morning business the Senate takes up its calendar of bills and considers until two o'clock such bills and resolutions as are not objected to, in the order in which they appear upon the calendar, and any Senator is entitled to speak once and for five minutes upon any question. A motion for consideration made during the morning hour is determined without debate.

The Senate meets at noon, and at two o'clock or earlier, if the one hundred and twenty minute hour expires earlier through failure of business, the calendar of "general orders," so-called, is taken up, and matters of business are considered in their order, with the exception that various motions may be made, two of which, if passed by the Senate, would confer a privilege—first, a motion to take up an appropriation bill; second, a motion to consider any other bill on the calendar. There is no general privilege conferred upon certain kinds of bills, as is the case in the House, except that a motion is first in order to take up an appropriation bill.

As in the House, the rules of the Senate require that every bill and joint resolution shall receive three read-

ings before its passage, but two of these readings are merely nominal, and are had before the bill or resolution is referred to a committee. The third reading is a real one, and is for the purpose of amendment. Upon the passage no amendment can be offered except by unanimous consent. The chief specific restrictions imposed upon amendments relate to appropriation bills and prohibit general legislation by amendment to a general appropriation bill or anything that is not germane or relevant to the subject; and also any amendment is prohibited which provides for the payment of a private claim, except to carry out the provisions of existing law or treaty.

The Senate considers not merely revenue bills and bills involving a charge upon the treasury, but all bills, in Committee of the Whole; but, although the journal may show that the Senate formally goes into Committee of the Whole and again rises, the practice is entirely automatic. The bill reaches the stage of amendment, and the presiding officer declares the Senate in Committee of the Whole and still retains the chair, and he is addressed, while nominally in Committee of the Whole, as "Mr. President" and not as "Mr. Chairman." After the bill is read, he declares that the bill is reported to the Senate from the Committee of the Whole with amendments, and the Senate formally acts upon what it has done while nominally in Committee of the Whole.

In the regular consideration of bills and resolutions, there is no limitation upon debate except that no Senator may speak more than twice upon a single question upon the same day without leave of the Senate, — a limitation that would seem of very little practical im-

portance in a body, the membership of which has been adorned with many men, who have not found it necessary to speak twice in order to occupy a single day.

The freedom of amendment and debate in the Senate are, as a rule, of much value when indulged in in good faith. Doubtless very much unnecessary speaking is permitted, but an opportunity is also given for necessary speeches to be made. It is inevitable, however, that such a free system should be abused and that debate should sometimes be employed, not with the object of throwing light upon the subject, but for purposes of delay. In 1900 a conference report on the Rivers and Harbors bill, which had passed each House in a somewhat different form, was called up in the Senate upon the day before the session of Congress was to come to an end. A Senator, whose State had not received some appropriation that was asked for, took the floor and held it for twelve hours, and to a time so near the end of the session, that it became evident that other necessary business could not be transacted, unless the Senate surrendered. The bill was thereupon withdrawn, and as a result failed of passage.

In 1903 a Senator, very near the close of a session, declared that he would keep the floor until the Congress expired, so that important appropriation bills would fail of passage, unless there should be included an item to pay his State a claim which had been pending nearly three-fourths of a century. The appropriations carried in the bills were absolutely necessary for running the machinery of the government, and, if they had failed, an extraordinary session of Congress would have been necessary. The conferees of both Houses, although

reluctant to make the appropriation for the claim, were practically compelled to do so, or submit the government to great inconvenience and loss. Other illustrations could easily be cited to show the abuse of the free right of debate, and its employment, not for the exercise of any process of reason, but to compel the majority to yield to the minority and even to surrender to the demand of an individual member.

The effect of unlimited debate is to require a consent nearly unanimous for the passage of measures very near the end of a session. It would appear that there should be some form of cloture to be applied upon business which had already been debated, and especially upon bills which in general had received favorable action by both Houses of Congress, and that a majority of the Senate should be permitted to determine when it was ready for a vote. The present unrestrained freedom of debate in important instances flagrantly violates the principle of majority rule, and besides, as we have seen, it is sometimes very expensive to the taxpayers.

It is doubtful whether the quality of speaking in the Senate is any the better on account of the unlimited freedom in which it may be indulged. If it were within the power of the body under its rules to impose a reasonable limitation, it might deliver itself from much empty and irrelevant talking, and yet leave ample time for legitimate discussion; and it would also occasionally prevent the thwarting of the will of a very large majority, by an employment of the forms of debate for the purpose of consuming time and preventing the taking of a vote. But debate in the Senate is generally very well

adapted to its purpose, not merely because of the ability of the members, but also for the reason that the physical conditions for speaking are excellent. The number of the members is not so great as to make difficult the maintenance of order, and the small size of the hall compared with that of the House renders it possible easily to hear.

The Senate originally had the ancient form of the previous question which prevailed in the House, but after the development of that motion in the latter body so that it became effective, the Senate struck even the inefficient provision which it had out of the rules, and it has never since favored measures looking to limitation of debate.

The standing and select committees of the Senate are about equal in number to those of the House, and the important committees usually have the same designation and practically the same jurisdiction. The body appoints the chairmen and other members by ballot, but as a matter of practice they are first made up by an unofficial "steering committee," and the report of this committee is ratified by the Senate, so that practically the appointment is by committee instead of by the Senate itself.

When the House exercises its constitutional powers of impeachment, the Senate is the court before which the charges must be made good. The managers on the part of the House appear at the bar of the Senate, and sometimes, as in the case of the impeachment of President Johnson, the members of the House of Representatives follow the managers in procession and attend upon the trial. The Senate, as the high court of im-

peachment, has established rules of procedure. When the President or Vice-President of the United States is the defendant, the Chief Justice presides, but in other cases the presiding officer of the Senate keeps his place. Each Senator takes a special oath to "do impartial justice according to the Constitution and laws." The course of the trial is generally the same as that of a court. The person impeached is summoned to answer the articles, and he may be represented by counsel. The Constitution provides that the votes of two-thirds of the Senators voting shall be necessary for a conviction.

A great portion of the time of the Senate is consumed in the exercise of its executive functions, such as the consideration of appointments for office and of treaties made with foreign nations. These proceedings are secret, except in rare instances where the Senate orders that they shall be conducted in public. The nature of the functions is ordinarily such as to make secrecy judicious. If charges are made against a person nominated for office, he is given notice of them, but the name of the person making the charges is kept secret. The rules make the disclosure of secret or confidential business ground for the expulsion of a Senator and the dismissal from the Senate of any of its officers, who shall be guilty of violating its confidence.

The necessity of securing the vote of two-thirds of the Senate to ratify a treaty, and of a majority to confirm nominations to office, goes far towards placing the President at the mercy of that body in the exercise of two of his most important prerogatives, and notably so of that relating to appointments to office. The result is

witnessed in the practical control which the Senators of the majority party exercise in the selections to office made from their respective States. The custom has grown up of permitting the Senators practically to dictate the nominations from their respective States in the first instance, and then by something which is called senatorial courtesy, to decide the question whether or not they shall be confirmed. This distribution of the patronage may fairly be said to represent the most highly prized, if not the most important, function of a Senator, as indeed it is responsible for the most distracting cares of the office.

If a bill or resolution has passed the two Houses in identical form, it at once goes to the President for his approval. But it is a very common practice for one of the Houses to make amendments in measures sent to it by the other. Sometimes very many amendments are proposed, and the character of the legislation may be radically changed. One House or the other must recede, or both must yield something, so that they may meet upon common ground. A complicated procedure has thus grown up between the two Houses in order to bring them to an agreement. If the House which originated the bill accepts all of the amendments, which are proposed by the other House, it goes at once to the President, but if it refuses to concur, and the other House does not recede from its amendments, but insists upon them, it is the common practice for conference committees to be appointed. In cases, frequent in the early practice, but exceptional in later usage, where there have been differences over amendments, the Houses have come together even without the appointment of committees of conference.

Requests for a conference come from the House which is in possession of the bill and the papers relating to it. Conferences are not confined to disagreements over amendments, but they have been held upon such subjects as questions of prerogative, the counting of the electoral vote, what titles it would be proper to give to the President and Vice-President, and upon other subjects of a general character. The conferences are usually held at the Senate end of the Capitol, and behind closed doors, although in some cases members and others have been permitted to make arguments before the committees.

The House frequently instructs its conferees, although it does not inform the Senate of the fact, but the practice of the Senate is against instruction. The Senate insists upon free conferences, and, in some cases, when it has been informed that the House had given instructions, Senators have protested against the practice. In the event of failure of the managers first appointed to agree, sometimes other managers are appointed in their stead, and there have been frequent instances of protracted conferences, and in some cases important bills have finally failed of passage through disagreement.

The subjects submitted to the conference are only those in disagreement between the two Houses, and it is not in order for the managers to include matters which are not in dispute. Oftentimes amendments may be proposed by the conferees to the amendments in controversy, but they must be germane to them and cannot involve new matter, and they must also be confined within the extreme positions taken by the two Houses. Sometimes differences between the Houses are very

radical, as in the case where one House has struck out of a bill sent to it all after the enacting clause and substituted a bill of its own, sometimes upon an entirely different subject. In such a case the jurisdiction of the managers is very wide, and their function becomes a highly responsible one. The most important bills are usually in conference near the close of a session when there is an impatience among the membership of the Houses to finish the transaction of the public business before adjournment. This circumstance increases the responsibility which the managers are under, for their action is apt to escape the critical scrutiny which it would receive at any other time, and it is pretty sure to be adopted.[2]

Reports of the conference committees are highly privileged, especially in the House of Representatives, where they are in order except during the reading of the journal, or while the roll is being called, or while the House is dividing upon any question. In the earlier practice it was not necessary that conference reports should be signed, but for a long time it has been the rule for the conferees to sign them and for them to appear in the journal. After the conferees have reached a final agreement, it is necessary for the Houses separately to adopt the report. After they have voted in its favor, the action becomes final so far as Congress is concerned, except in case of veto by the President.

The common form of disagreement between the Senate and House does not relate to any question of prerogative, but involves provisions of bills or resolutions equally within the power of both Houses to pass. The traditional and important ground of difference

grows out of the sole right of the House, which the Constitution confers, to originate all bills raising revenue. The controversy over the extent of this prerogative arose very early in the history of Congress, and it is still unsettled. The early position of the House was that the Senate had no power to amend a money bill by changing its objects or altering the quantum. On the other hand, the position was taken by the Senate that the special prerogative of the House extended only to bills increasing revenue and that the Senate could originate a bill reducing revenue. In 1830 Mr. Benton, of Missouri, introduced in the Senate a bill for the abolition of unnecessary duties, which he subsequently withdrew. Again the following year he asked leave to introduce a bill for the gradual abolition of duties, but leave to introduce was refused.

In 1833 the same controversy again recurred, the Senate having originated a revenue bill and the House one to the same effect. The bill with the House number was finally passed. In 1859 the Senate added a tax amendment to an appropriation bill, and the House declined to proceed further with the bill. In 1864 on motion of Mr. Thaddeus Stevens, of Pennsylvania, the House adopted a resolution that a Senate amendment, providing for a tax on incomes, on a bill which was not a revenue bill, infringed upon the constitutional prerogative of the House. The Senate reconsidered and passed the bill, striking out the obnoxious amendment. In 1871 the House adopted a resolution taking exception to a Senate bill which repealed the income tax. The Senate asserted the right, in the conference which followed, to originate bills repealing a law or a

portion of a law imposing taxes, duties, and imposts, even if such repeal rendered necessary the imposition of other taxes. Mr. Roscoe Conkling was a member of the Senate Conference committee, and, although he represented the most populous state in the Union, which would relatively lose by giving increased power to the Senate, in which the small States had the same representation as the large States, he contended for the position, which would enlarge the power of the body of which he was a member, by decreasing the power of the individual citizen of the State he represented. The House conferees refused to assent to the position of the Senate and pointed out that the "right to originate not only tax and tariff bills, but also appropriation bills" was conceded to the House of Representatives until 1832, when the right of repealing duties, was unsuccessfully asserted by the Senate, and again in 1833 the same thing was attempted, but without success. The committee dealt with citations of law where taxation provisions had originated in the Senate, but asserted that those provisions had apparently not been brought clearly to the attention of the House, and that waivers of such a character could not be considered as a surrender of a great constitutional privilege. The resolution recommended by the House conferees was adopted by the House after debate.

In 1872 a resolution presented by Mr. Dawes, of Massachusetts questioned the right of the Senate to substitute a bill to repeal duties on tea and coffee for a House bill to reduce other taxes. The resolution was supported by Mr. Garfield and was passed by an almost unanimous vote. Mr. John Sherman declared

in the Senate that it was the first time that the power of that body to propose amendments to revenue bills had been questioned. The Senate committee in its extended report admitted that the Senate could not originate a bill reducing any existing tax, but contended that it could originate a bill entirely repealing the tax, because such a bill would not be one for "raising revenue." In 1878 the Senate amended a House bill relating to post routes by adding revenue amendments. The House passed a resolution returning the bill and amendments to the Senate. Neither House receded from its position.

In 1903 Senator Hoar, of Massachusetts, said: "The greatest constitutional authority in this country, save Marshall, as we all agree on both sides—Mr. Webster —declared in the Senate that, whatever might be the opinion of the Senate on this question, it was in the nature of the case absolutely clear that it was a matter which must be settled always by the sole opinion of the House of Representatives, and that, whatever the Senate might think, the House was the sole constitutional judge of the extent, meaning, and scope of that constitutional provision. A careful reflection will show that Mr. Webster was clearly right." In the same debate, Senator Spooner said, "I have a conviction that it is not in the power of the constitution of the Senate to originate a bill which increases a tariff rate or reduces a tariff rate or removes a tariff rate."

In 1905 the Senate added a revenue amendment to an appropriation bill, and the House thereupon returned the bill to the Senate; the latter body reconsidered and struck out the amendment. Leading Senators, however,

asserted the right of the Senate to make the amendment, although so great a lawyer as Senator Spooner again dissented from his colleagues and conceded the soundness of the position of the House. Mr. Spooner said that the Constitution used the word "raising" in the clause giving the House authority to originate all bills "raising revenue," in a generic sense. "I do not think that it means simply raising duties. Oftentimes revenue is raised by lowering duties. I think it means in a strict sense 'concerning revenue.' The Constitution does certainly confer upon the House by that clause an exclusive right so far as this class of measures is concerned." Quite obviously the expression "all bills for raising revenue," meant all bills relating to taxation, or "concerning revenue," as Senator Spooner declared. To say that the prerogative of the House was intended to apply only to such bills as increased taxation savors strongly of hair-splitting and quibbling. It would appear to be a narrow and technical construction, even if applied to a criminal statute, and wholly out of place in construing the organic law of the land. The House has sometimes been lax in the assertion of its prerogative. It has sometimes yielded to the partisan desire of the majority of the moment, but when the issue has been fairly brought to its attention, it has usually maintained its prerogative by emphatic majorities. In practice the general appropriation bills are now in a sense treated as "money bills," and their formation, as well as the formation of those relating to taxation, is given over to the House.

CHAPTER X

The Joint Convention. Miscellaneous

The two Houses perform a very important and impressive function in joint convention. The twelfth amendment to the Constitution provides that the President of the Senate shall, in the presence of the Senate and the House of Representatives, open the certificates of the electoral votes and that the votes shall then be counted. On a day in February, immediately following a presidential election, the two Houses assemble in the hall of the House of Representatives, with the President of the Senate in the chair and the Speaker at his right. Four tellers are appointed who canvass the electoral vote and declare the result. The importance of the transaction is so great that the two Houses are practically made the canvassing board. In case no one of the candidates has received a majority of all the electoral votes, the House of Representatives proceeds immediately to elect a President by ballot from the three highest on the list of those who have received electoral votes. In the event of an election in the House, each State is entitled to cast only one vote.

The House as well as the Senate may sit in secret session, and in former times it occasionally did so, but it has been many years since it held a session which was not public. In 1811 the House passed a joint resolution

relating to the Southern boundary, and this was thought of sufficient importance to justify a secret session. The resolution was sent by a committee of two members to the Senate, which received them in secret session and passed the resolution with an amendment which was concurred in by the House, again behind closed doors, and a confidential message announcing the fact was sent to the Senate. This secrecy was continued to the point even of receiving in secret the message of the President announcing his approval of the resolution. This illustrates how theoretically there may be ground for a secret session of the House, but it is of greater value to show the difference between that time and the present. If such a proceeding were attempted to-day, the resolution would no sooner be introduced than it would be reported by some enterprising newspaper correspondent, and, if its exact terms were not known, there would be such an exaggeration of its import that publicity would at once be required in order to allay popular apprehension or, if by any chance the secret should be kept until the resolution had passed the House, some member of the secret committee would be likely to be interviewed on his way to the Senate. Secret sessions of Congress to-day are in effect impossible. Executive sessions of the Senate are, as we have seen, held in secret, but, although that body is much smaller than the House, the proceedings of these sessions upon any matter of general public concern are usually known before the doors are opened. Three-quarters of a century ago the Senate and the House used to exchange confidential messages, but this practice has long been abandoned, and for many years their negotiations have been carried on in

the cold light of publicity. In 1843 President Tyler sent a confidential message to the House which was not entered upon the journal, but since that time the House has received no secret communications from the President, and the public now has the opportunity, no longer rare, of reading messages that proceed from the Executive.

There occasionally arise differences between the Houses and the President. So far as they relate to vetoes of proposed legislation, they are entirely normal and in line with the Constitution, and involve merely differences of opinion as to the expediency of enacting particular bills. The veto in the early history of the government was rarely used, but during the last half century it has been very often employed. A vetoed bill is put upon its passage, and the vote must be taken by yeas and nays. If it receives a two-thirds vote of both Houses, it thereupon becomes a law, and if it does not receive such a vote it finally fails. Sometimes, however, differences have occurred, where the Houses have resented some action upon the part of the Executive as an infringement upon their prerogative. President Tyler, in 1842, sent a message to the House protesting against the report of a House committee which criticized one of his messages. The House thereupon resolved that while "it is and ever will be ready to receive from the President all such messages and communications as the Constitution and laws and the usual course of public business authorize him to transmit to it, yet it cannot recognize any right in him to make a formal protest against votes and proceedings of this sort." On March 28, 1834, the Senate passed a resolution practi-

cally accusing the President of usurpation, and on April 17 President Jackson sent to the Senate a protest against the resolution. The Senate subsequently passed the resolution of which the House resolution to which I have just referred is in effect a copy. This action by the Senate gave rise to the famous controversy which culminated in the passage of the expunging resolution. In 1868 the House voted to lay an obnoxious message of President Johnson upon the table.

At the opening of the present session* the President sent his regular annual message to the two Houses, which contained a passage reflecting upon the motives of members of Congress in voting upon a proposition, relating to the employment of the secret service men connected with the Treasury Department. A special committee was created by the House to consider the portion of the message referred to, and, after an investigation and the passage of a resolution to which the President replied by a further message, the House voted that the obnoxious portions of the message be laid upon the table, which is the legislative way of consigning a document to the waste-basket. The Senate also adopted an order for an investigation, but its committee has not yet made a formal report. Collisions of this sort are fortunately very rare.

The Constitution makes each House the final judge of the election, qualifications, and returns of its members, and as a result of such broad powers exercised by bodies under partisan control, the precedents sometimes show questionable decisions. These precedents are not uni-

* December, 1908.

formly of value to the student of the law of elections. During the period of reconstruction the decisions of committees were based upon conditions, far from normal, and the law was stretched in the attempt to meet a very exceptional situation. But as a rule the law governing contested cases is now fairly applied. The election committees of both Houses are usually composed of able lawyers and for nearly two decades it has been rather the exception for contests to be decided upon purely party lines. Conditions would probably be improved somewhat, if a special oath were administered to the members of the committees to try the cases upon the law and the evidence.

Members of both Houses are prohibited from holding any other office under the United States during their continuance in the office of member. In the early days of Congress a member from New York joined a militia company in the District of Columbia and was elected as one of its officers. At the most, the office was nominal, with few emoluments or duties. He accepted, and it was held that he thereby resigned his position as a member of the House. The precedent established in that case has been almost invariably followed in time of peace. In time of war, the constitutional rule has not been so strictly enforced. During the Spanish War, the Judiciary Committee of the House found that four members of the House had accepted commissions in the army and had thereby vacated their seats as Representatives, and it reported a resolution declaring the seats vacant. The House avoided passing upon the resolution by declining to consider it, and the members, although acting clearly in defiance of the constitutional

provision, were permitted to retain their seats. It is held that visitors to military and naval academies, regents and directors of public institutions appointed under the law from the Senate and House, are not officers within the meaning of the Constitution.

The proceedings of the Houses are supposed to be published verbatim in the Congressional Record. The debates for the first thirty-five years were printed in a condensed form in the Annals of Congress. At the end of that time a system was inaugurated which in the course of time resulted in finally establishing the present system of having, or at least appearing to have, the debates reported verbatim. The Record, however, does not show with entire exactness the proceedings of the House. Sometimes speeches are printed under special leave given by the House, which were never delivered upon the floor; and sometimes members edit their remarks in such a way as radically to change their character. Strictly, it is not in order to do this, and in some instances the attention of the House has been called to the matter, and it has ordered the stenographic report inserted, especially when any other member had been in any way affected by the change. According to the spirit of the rule, the record should show the proceedings of the House with a fair latitude to members to correct any inaccuracies of fact or verbal errors, and it has been a common practice in the case of personal controversies to permit language to be modified with the consent of the members especially concerned, if no change were made affecting anything spoken by another member. The official stenographers are not permitted to report anything beyond the pro-

ceedings of the House, and when a candidate for the presidential nomination who had formerly been a member of the House came upon the floor, and was applauded upon his side, and the Record upon the next day contained a statement of the fact, the reference to the affair was ordered to be expunged. Sometimes magazine articles and even entire books have been published in the Record under leave to print. More than one effort has been made to restrict the Record to the actual reporting of the debates and to the transaction of the business of the two Houses. The Senate does not give its members leave to print speeches, but it is very liberal in permitting them to print extracts from books, documents, and other publications which have not been read in debate. It has especially attempted to prohibit the printing of speeches not actually delivered, and once passed a resolution to that effect, but it was never acted upon by the House.

In addition to their work in connection with committees and the various processes of legislation, the members of both Houses are called upon to do a great variety of work in attempting to meet the personal wishes of individual constituents, and they are made the agents for performing various offices the farthest from legislative in character. They are certain to be invited to secure better postal accommodations, to attempt to expedite the action of the Pension Commissioner upon applications for pensions under the general law, to investigate the action of departments, especially so far as it may affect the business of constituents, and to give them information upon a wide range of subjects. They also appoint cadets to the national

military and naval academies. They are sure to be called upon to indorse constituents for any office in the gift of the government. In addition to these and other departmental duties, they are made the distributors of public documents which are assigned in certain numbers to members of both Houses, and it becomes their duty to distribute these documents to the public and usually among their constituents. Then a custom has grown up of making a large appropriation each year to purchase seeds, which are allotted to the members, and each of them is called upon to send out thousands of packages.

A Senator or member of the House is the only officer of the national government at Washington with whom the people usually come in personal contact, and as a result there is illustrated, especially in what they are called upon to do, the paternalism of government. An association in a member's district desires to hear the President or the Secretary of State speak, and the member is given the opportunity to secure him. One member was asked by a constituent who was engaged in the laudable work of improving live stock to secure for him some young pigs of a certain breed. Another was called upon to advise upon the best way to bring up children. By a very questionable custom the member is called upon by the Post Office department, if he agrees with the politics of the administration, to recommend candidates for the post-offices in his district; and occasionally very enterprising constituents ask his help to secure for them government contracts, although at that point the line is usually drawn. This "chore" work of members is by no means a new thing,

nor is it peculiarly an American institution. It has existed not merely ever since the foundation of our own government, but, even in the time of Edmund Burke, it seems to have been a well-settled attribute of a member of the House of Commons. Mr. Burke said that "in the private business of my constituents I have done very near as much as those who have nothing else to do. . . . I was not only your representative as a body; I was the agent, the solicitor of individuals; I ran about wherever your affairs could call me; and in acting for you I often appeared rather as a ship-broker, than as a member of parliament. There was nothing too laborious, or too low for me to undertake." And then followed a touch of rhetoric which very likely appeared true to one of Burke's powerful imagination, "The meanness of the business was raised by the dignity of the object." Each member is allowed a private secretary who is paid a respectable salary by the government, and it is only with his assistance that the member is now able to do all the work of the character to which I have just been referring.

The rule requires that a member shall not vote upon a measure in which he has a direct pecuniary interest. In this respect it only enjoins that which a proper delicacy would require him to do, regardless of any rule, for there never was a sounder maxim than that a man should not be a judge in his own case. It has been held that the rule did not disqualify one who owned stock in a national bank from voting upon a bill relating to banks, but that his interest should be more direct, and not merely that of one of a class. It

is not so easy, as might at first appear, to decide as a practical question, where the line should be drawn, at which a member should not be permitted to vote, or should refrain from voting, and it scarcely seems possible to draw any hard and fast rule. The interest doubtless should be material. If the position were taken that one should not vote where the result might be to affect in the slightest degree the value of what he had, it would be practically impossible to have a member of either House who could vote upon some of the measures brought before Congress, unless he were qualified to take the poor debtor's oath. A general revision of our tariff laws includes by name or by general classification more than four thousand different articles. They comprehend not merely the output of mills and furnaces and shops, but the product of the farm, the mine, and in fact they sweep through the whole range of the commerce and industry of the United States. They involve also the interests of men not directly concerned in the tariff at all, except as they are consumers. The product of the railroad, for instance, which is transportation, cannot be the subject of protection by a tariff tax, but the railroads are vitally concerned in the duty upon rails, and upon the other articles which they purchase in great quantities. Of the $110,000,000,000 of values which the country contains to-day, there is scarcely a dollar which might not theoretically be affected by imposing or raising some duties or by lowering or taking off others. It is difficult to imagine a member so destitute that he might not have some possible financial interest in a general tariff bill, and if all such members were excluded from

voting, there would be no Congress left to legislate. But any honest man of the least good sense is not at all likely to get upon doubtful ground. He will know when he is in any danger of becoming, or of appearing to become, an advocate of his own special concerns.

It was not the notion of the founders of our government that those who directed its operation should have no financial interests, and financial interests will inevitably be affected by governmental action. They chose as their first President George Washington, who was the richest American of his time and probably owned nearly as great a percentage of the wealth of the country as does any American of our own day. They chose men of substance to both Houses of Congress, and some of the States imposed property qualifications upon their highest officers. In Great Britain the constituencies are so made up that interests are represented as interests. Many districts are inevitably represented by working-men. The landed interests have their representatives, as have the seats of learning and the financial and commercial classes. And one thing, it seems to me, may fairly be said in favor of this system. It adds to the representative character and efficiency of the British House of Commons, as well as to the stability of the British government. If, in America, we could have the same broad representation; if we could have industrial and financial captains like Morgan and Carnegie, labor leaders like Gompers and Mitchell, railroad builders like Hill and Harriman, with a sprinkling of men chosen by the universities as in England — our Congress would certainly not be a weaker body, and it would perhaps more fully epitomize

the nation, represent its industrial and social life, and we should have representative government in even a truer sense than that in which it now exists. Where all classes are directly represented, the whole circle of fact will be known, and one class will not be so likely to fatten upon the others.

To one who can see nothing but graft above the horizon of our politics, it will doubtless appear wrong that a man holding a responsible government office should have property, because he may seek to use the governmental machine to make his interest greater. Oftentimes members have not only refrained from voting where their financial interests might be affected, but have even voted against their interests. If we are to proceed upon the theory, in which I certainly do not believe, that financial self-interest will be the dominating motive in determining the action of public representatives, the man who has nothing is as likely to vote to improve his condition as the man who has something. The representation in that case should not be made up from the single non-property-owning class, but should be taken in due proportion from all classes, so that the warfare of society should be reflected in legislative bodies and fought out there. It would be a policy of very doubtful wisdom to make the membership innocent of any personal stake in the great industrial and financial affairs of the country or in its prosperity, and in that respect the membership of the two Houses is to a fair degree representative. Both Houses contain men of wealth, but it is quite the exception to have a member who is enormously rich. The greater number of the members are in moderate

circumstances and not a few of them are poor. They are a part of the industrial and social fabric which they represent. As a rule, legislation which would be detrimental to the mass would be detrimental to them, and legislation which would improve the condition of the country would correspondingly benefit them.

Two things in the British system have tended strongly to impart an aristocratic character to the structure of the House of Commons. The members receive no salary, and, except in cases where they represent some particular interest which contributes to their support, it is necessary for them to have independent means. The other circumstance that tends to the same end, and is akin to the cause I have just indicated, is the great cost of an election which, according to a recent parliamentary return, has averaged at a general election more than $10,000 for each seat. With us the annual salary of $7500, while not sufficient to maintain any degree of state, will enable the average member to live respectably, supplemented as it is by the use of an office, a liberal allowance for stationery and travel, and the payment of a secretary. The average expense of an election relatively to that in England is very small. Except in rare instances, where some rich man attempts to buy a seat, or in a few localities where there are exorbitant assessments for the local campaign chests, it is probable that the average cost of an election to a member of the House of Representatives does not exceed $1500. And in making the comparison it must be borne in mind that the average constituency here is very much larger than in Great Britain.

It might be supposed, in view of this difference

between the two systems, that we should have a House both politically and socially more representative of the American people, than is the British House of Commons of the British people, but it is quite certain that such a conclusion would not be correct. Using the term "classes" as synonymous only with divisions of population, there are large classes that have few or none of their members in our representation. With twelve millions of negroes, who are not merely inhabitants but citizens, there is not one in either Senate or House. With large armies of working-men there are very few in Congress, although the House of Commons has a considerable party of them. The English system, as we have seen, secures representation to classes by the diverse character and size of constituencies. It would probably add to the efficiency of our House of Representatives if it were not made up so largely of a membership of a single tone. The profession of the law is apt to give the kind of reputation, which most often results in an election to Congress, and a large proportion of the membership of the two Houses is made up of lawyers. If there were more farmers, more important business men, more artisans and members of labor organizations, more railroad builders, the vast interests of the American people would have a more intelligent and a broader representation.

The work of electioneering is undoubtedly more arduous here than in England. Our population is much more scattered and some single congressional districts comprehend many thousand square miles of territory. Our campaigns are much longer, and the endurance of candidates is often taxed to the utmost.

Our peculiar conditions sometimes invite methods more or less spectacular and, as it is usually the exceptional that gives the hostile critic his basis for generalization, sweeping deductions from isolated cases have at times been made against us. But every free nation, I suppose, has its own characteristic faults or excesses in politics, and if we do not recognize our own, and often whether we do or not, we may be sure some good friend of ours in another country, with the smugness that good friends often show, will point them out for us. This process is not always agreeable, and it easily provokes reprisals. A very British writer, in a lively study of our politics which he recently made, reached the conclusion that they were decidedly vulgar. I imagine we should readily grant that in many things we are behind our brethren across the sea. But, to illustrate the ease with which reprisals may be made, we may admit that we have not yet developed that finished and delicate system, under which political meetings are broken up by women throwing carrots and cabbages at the heads of the speakers, and retaining possession of a captured hall by chaining the seats to their fair persons. Quite likely there is some room for improvement in both countries.

CHAPTER XI

Results

And now having outlined the general processes and the working of the legislative machine, we come to consider some of the results. If we are concerned chiefly about the right of free-speech, as so many critics are, it will comfort us to know that the Fifty-ninth Congress, which is the last completed Congress, produced in the speech-making line enough to fill some 14,000 of the large pages of its Record. About one hundred ordinary volumes, therefore, would measure the magnitude of the gifts of that single Congress to the literature of eloquence, of which it would probably be optimistic to say that a single volume would for one generation survive the assaults of envious time. But, instead of considering the utterances of individual members, let us turn to the joint expressions of the two Houses which are seen in the formal enactments of law. Here also, considering now simply the mass, and not the quality, of its output, one fails to find any evidence of inefficiency in the working of the legislative machine. To express the result in terms of numbers and bulk, the Congress to which I have referred, in its two brief years of life, gave to the country seven hundred and fifty public laws and some six thousand more of a private

character. The public laws alone fill a great volume, sufficient in size to contain the laws necessary for the regulation of the whole universe, according to the notions prevailing a century ago. When we bear in mind that each Congress is even more diligent at law-making than its predecessor, we may get some notion of the rapidity with which we are drifting. And not merely the great legislative mill at Washington, but the lesser mills at Albany and Boston and at more than forty other capitals are grinding out laws. The shelves of our libraries are already groaning under the burden of statutes, and the product of a few decades of our present activity will be so enormous as easily to surpass one's ability to comprehend it. We are a great manufacturing people, and we delight to express our industrial achievements in terms that dazzle the imagination. But we easily lead the world not only in the quantity of iron and other material things we produce; we lead it also in the bulk of our laws. Many of these laws, state and national, are of a penal character, with penalties often of great severity, and in some instances, with their artificial standards, conscience affords no guide to one who is ignorant of their provisions. Only the very few can be familiar with the multitude of these statutes, and the mass of men necessarily know little or nothing about them. The crimes they create would in some cases be the natural expressions of a benevolent heart, and law-breaking becomes unavoidable even among those who are best disposed. The aspiration to multiply penal laws is a characteristic trait of a free and inventive people. With the ingenuity to devise legislative nostrums to cure the supposed defects in the work of na-

ture, and the freedom to prescribe them, man's natural powers are more and more restrained by statute. He is endowed with statutory virtues, and finally the puny, statute-made creature ceases to stand in the image of God, whose place as Creator the law-making agency has attempted to usurp. We have reached that temper, for the moment only, let it be hoped, when nothing seems so galling as real freedom, and when society must have its fetters, even if they are self-imposed. If the books of the Sibyl were law books, one can well understand how their value increased as their number diminished. And unless we shall speedily come to realize the truth of what Burke said, that repeal is more blessed than enactment, we shall, by the chains that we are constantly forging, reduce ourselves to a state of slavery, or at least reach a condition where government takes the place, not merely of the father and mother, but of the Deity, also. There is one characteristic of our national penal statutes to be noted, and that is the severity of the penalties, which as a rule are greater than those of our more intelligent States. In some instances where the offense may be merely technical, and in cases of possible ignorance without any moral turpitude, the minimum sentence the court is permitted to impose is a long term in prison.

In looking at the results of the work of Congress, there is another feature deserving of attention, and that is the facility with which it has recently spent money. To the social reformer, zealously seeking to manipulate the legislative machinery to accomplish his ends, the subject of governmental finance is indeed vulgar. And yet a scrupulous care for finance underlies the foundation,

not merely of an honest character in individuals, but of honest and efficient government. A disregard of it has scattered distress and want, caused rebellions, and led to the destruction of great nations. Lord Rosebery never uttered a truer word than that thrift lay at the bottom of most of the great fortunes of the world, and that care and prudence in money matters had gone to the making of great empires. Thrift has almost invariably been a prime quality of statesmen of the first rank, of rulers like Washington and Frederick and Napoleon. The appropriations of money by Congress now reach a total of something more than a billion dollars each year. In making a comparison between the budgets of this and of foreign nations, to get a basis for per capita expenditures, it is important to bear in mind the important part in government performed by our States and municipalities. These impose upon themselves the taxes necessary to support the public schools, to build and maintain the streets and highways of the country, to support the courts which try the great mass of civil and criminal cases, to maintain the police, to secure protection against fire, to provide playgrounds and parks, and to perform generally the far greater number of the functions usually discharged by government. The national defense, which our strength and our isolation should render a simple task, and the few great common concerns, which cannot adequately be cared for by the States, represent the jurisdiction that properly belongs to the central authority. And to get the money necessary to discharge these duties, the federal government is rapidly galloping through all the available fields of revenue. Omitting the charge for

pensions, which were chiefly the result of the Civil War, and which should diminish as the war recedes from us into the past, the expenses of our national government have more than doubled in the last dozen years. We are supposed to be free from the burdens of militarism, and yet our military establishment costs vastly more than that of any other nation. The military expense is represented by pensions which are a burden entailed by past wars, and the army and navy appropriations. The pension bill has already passed the House carrying more than $160,000,000; the naval bill carries $135,000,000, an amount pretty sure to be increased by amendments in the Senate; and the army bill is to follow with easily $100,000,000 more. Our total war bill is now $400,000,000 each year.* France and Germany, side by side, with a military rivalry stimulated by almost innumerable past wars, and with their enormous standing armies, have long been held out to us as representing the evils of militarism, and yet this republic, guarded and protected by the two great oceans, has a larger war bill than both those countries combined. It is quite the common thing to look with favor upon projects which are far from governmental in their character, and many of our expenses present an extravagance which no prudent man would tolerate in his private business. Popularity is purchased by a profuse giving and spending, and those officers who have shown an honorable parsimony concerning the public funds do not as a rule commend themselves to the public favor.

Perhaps the most striking drift in our government is

* This was said of the last session of the Fifty-ninth Congress.

seen in the tendency to concentrate authority at Washington. This tendency is in part a natural consequence of the revolution in methods of communication and transportation, and in part it is a stimulated and artificial tendency. These improved methods have greatly enlarged the radius of action of the individual, and have imposed a necessity of broadening to an extent the scope of uniform law. But this revolution has been accomplished, and the perfected results have been reached, under the stimulus and the regulation of state law. The railroad and the telegraph are scarcely modern, and the telephone in its effective form must be regarded as the gift of the last century. The degree of centralization, which we have recently attained, is in part the outcome of spasmodic action and by no means wholly the result of the pressure of changed conditions. A concentration of influence at Washington may lead to the operation of a vast and far-reaching governmental machine, and there is every temptation to the men who wish to "do things" to set it in motion.

The conditions to which I have referred have been used rather to force an ill-considered and unnecessary invasion upon the ancient rights of the States, which as a rule have been exercised with moderation, and yet with results so beneficial upon progress and expansion as nowhere else to find a parallel. That progress and expansion have already been checked as the result of a forced extension of federal authority. With the creation of new industrial agencies of marvellous potency, the quickening of enterprise, and the bewildering accumulation of wealth, it was inevitable that abuses should appear. But to maintain that these abuses were inci-

dent to the system of state, rather than of federal control, imposes a burden not lightly to be assumed. One would need to forget the colossal grants of the public lands, and, on the darker side, the Credit Mobilier. There is seen this tendency to draw authority to Washington, and, after it is drawn there, we see the further tendency toward a dislocation of power as between the executive and legislative departments of the government. It must be admitted that there is an efficiency to one-man power, if by efficiency is meant quick action with or without deliberation. But it is a truism to say that the first requisite of a good government is not simply to move, but to move safely. It is in politics as Horace said it was in letters; you steer too broadly away from one vice and you run into its opposite. Those who are impatient at the delayed, even though matured, action of representative government, who are looking wholly at celerity of action, lose sight entirely of the fundamental evils of autocracy. A President undeniably has power enough already, without usurpation, to permit him to become dangerous to any system of law, especially if Congress or the States shall loosely hold any of the powers which our system contemplates they should exercise.

Our history has repeatedly shown that the tremendous power, that comes from the filling of offices, enables the President practically to control the nominations of his party under the caucus and convention system, and that as a rule it is the more effective for this purpose, the more unscrupulously it is employed. If we add to this the power that may come from inquisition into the business affairs of the private citizen through

an extreme extension of the national inspector system, we put into the hands of a President the infallible means of exercising supreme control of his party. The two would ideally supplement each other, and we should have both a system of rewards and a system of punishment. With many loosely defined statutory crimes, and a great enginery of prosecution in the hands of one unscrupulous man, the petty pilfering of the ordinary political grafter would soon become insignificant. Then would begin to dawn again the era of corruption on a grand scale, when men would purchase immunity by enormous campaign gifts and by political obsequiousness to a personal will, and we should have an ideal system for levying political blackmail.

The world has been experimenting for many centuries with systems of government, but the old issues constantly recur between autocratic and representative government. An elected President is, of course, representative, but he is representative as an executive merely, and as to the very limited participation which the Constitution gives him in the work of legislation. The question whether he shall strictly confine himself to the exercise of those powers which are his according to the spirit of the Constitution, or shall wield all doubtful powers and, through the great authority of his office, coerce or influence the members of the other departments to do his will, and disarrange the balance created by the Constitution, raises the old issue between autocratic personal government on the one hand and representative constitutional government on the other.

The President is chosen by all the States and the Senators and Representatives by separate States or

constituencies. The claim of President Jackson that the President was the direct representative of the whole people is to-day very often heard. Webster denounced the claim, at the time it was first put forth, as untrue and dangerous, and said that there are "no other direct or immediate representatives of the people in this government than the members of the House of Representatives." The President, however, is the only officer chosen by the whole country, and it is implied that he is the only officer representing the whole of it and with a duty to the whole. But the high and sanctioned view of the proper function of a member of either House of Congress clearly is that he has a primary duty to act for the interests of the whole country. The first obligation of a member of Congress is not to his immediate constituency. The picture of the duty of a representative painted by Edmund Burke in his speech to the electors of Bristol remains a true one to this day. Speaking of his duty upon a certain measure as between England and Ireland, he said, "I was bound to serve both Kingdoms"; and again: "I did not obey your instructions . . . I am to look indeed to your opinions but to such opinions as you and I must have five years hence. I was not to look to the flash of the day. I knew that you chose me in my place, along with others, to be a pillar of the State, and not a weathercock on the top of the edifice, exalted for my levity and versatility, and of no use but to indicate the shiftings of every fashionable gale."

Undoubtedly this elevated ideal is not generally realized in practice. No ideal of the performance of the duties of a public office, even of the highest one, usually

is realized. But Burke's ideal was the true one. In the framing of our tariff bills it is true that the Representative or the Senator is apt to consider too much the particular interests of his State or constituency. This special representation is often carried to a fault. But those measures are so much of a compromise character that the President usually receives them as a whole, and no general tariff bill has ever been vetoed. But with regard to the mass of important measures that come before Congress, the members are practically untrammeled so far as local interests are concerned, and their duty at least is clear that as to all measures they should consider the whole country. But even if the influence of local interests may prevent the individual member from speaking for the whole country, after the clashing of localities and sections and the balancing of interests, the House as a whole speaks, and, more nearly than any other organ of government, it utters the collective voice of the Nation. In these times no one man is great enough to do that.

Under a system of one-man power it would be much easier for gentlemen desiring to have something done by government to rush to Washington and have it done quickly. As I have said at another time, were the government imaged in one man, it would be likely to reflect all the extreme qualities of the man. It is much safer to secure an average by having policies filtered through some hundreds of representatives after a due amount of deliberation. In the one case you will get the action of a man; in the other case you are likely to get the action of a nation. The experience of centuries has worked out the parliamentary system in free govern-

ment and has demonstrated its greater safety, both to society as a whole and to individual freedom, than a system of one-man government. Where enormous powers are put in the hands of one, it is difficult to impose practical limitations upon them. The power which is concentrated and easily marshaled is more apt to increase, than the power that is disseminated through a vast machine, which cannot be at once set in motion. Great ships should sail by the charts and not fantastically tack to catch every capful of wind. They should leave that to the small craft of the sea. And a really great nation can not move fitfully and by sudden leaps, but, like civilization itself, it moves majestically and resistlessly, bearing safely with it the interests with which it is entrusted and accomplishing its high destiny.

The extension of the power of the Executive tends to intensify a condition in our politics which is already too much exaggerated. The enormous stake involved in the election of a President tempts the parties to subordinate all other considerations to that of availability alone. It requires a great deal of advertising to impress an enormous electorate like ours, and the man who can be the most successfully advertised is the one likely to be nominated. This is seen in the frequency with which we have selected the military hero. In the civilized states of Europe, statesmanship is thought to be an art which requires special training, and an experience, more or less successful as a soldier, is not considered the sole method of demonstrating the fitness of a man to perform the most responsible duties of the statesman. In England no soldier has been chosen prime minister since the Duke of Wellington, but in our country every successful

candidate for the presidency, with a single exception, from the time of the Civil War until the election held last November, was a military hero; and when the people could not find a great hero, they have sometimes been contented with a little one. We elected in November a man with a distinguished experience in civil life, but our stock of military heroes was running low. The necessity for something spectacular, something that will appeal to an enormous electorate, is one reason perhaps why the roll of Congress, bearing the names of humdrum and plodding statesmen, is not, as Mr. Wilson says, called when the candidate for the presidency is chosen. A man who has done some "stunt," and who is at the moment conspicuous or notorious, is the man upon whom the choice is likely to fall, and fitness is strictly subordinated to availability. Fitness is almost the last quality looked for in choosing a candidate for Vice-President, for he has sometimes been selected even to give relief to the troubles of a party boss in some great State.

The distribution of powers fixed by the Constitution has demonstrated its value in securing the ends of government and in safeguarding individual freedom. And notwithstanding the division into departments, we see as a result of the workings of our institutions, not the discordant system which some critics have witnessed, but a rational unity which falls much short, and should fall much short, of the centralization of all power and responsibility in a single organ of government. This unity and harmony of action are only destroyed in those cases where different parties divide the control of different branches of the government, where, for example, the

majority of one or both of the Houses of Congress are chosen from one party, and the President is chosen from another. But at a time of divided control, where a matter really vital to the country arises, there has usually been found a majority, regardless of party, willing to do the thing that the crisis demanded; and as to the so-called policies of parties and their proposed legislation, the country occasionally needs a rest from political exploitation and thrives under it. The very fact that there is a division in political control reflects a balanced condition of public opinion upon the issues presented to the people, and under any rational system of popular government legislation should not be had until that opinion should become pronounced.

And yet it would be well if the relations between the executive and legislative departments could be made more direct. The presidential message, established by the Constitution has been very much overworked, and it has fallen somewhat into disrepute, because it has been used for purposes for which no state paper should ever be employed. It has been not uncommonly used as a method of making an appeal to the country under the guise of a communication to Congress, and has even been employed as a vehicle for delivering attacks upon individual American citizens. If the immediate agents of the Executive were upon the floor of one House or the other to explain the details of proposals and were subjected to questions, some of the evils of the present system might vanish, and the relation between the two departments might become more businesslike and effective. At any rate, something would be gained if friction should disappear, and if we should no longer

have the Executive haranguing Congress and the latter either replying in kind or treating messages with silent contempt.

If a system could be devised, as has more than once been proposed, which would permit cabinet officers to appear in both Houses of Congress, this unity might still further be secured without the resulting concentration of power; but a scheme giving cabinet members a right to vote in either House would not be possible under our present constitutional system. A solution was proposed in a bill introduced in the House of Representatives in 1865 by Mr. Pendleton, of Ohio, which was referred to a select committee containing upon its membership such notable men as Thaddeus Stevens, Justin S. Morrill, Robert Mallory, and James G. Blaine. This committee submitted a report which provided that the heads of executive departments might occupy seats upon the floor of the two Houses. The committee were satisfied that Congress had the power to pass the bill. The proposition was never called up in the House for action. In the First Congress executive officers sometimes appeared upon the floor of one House or the other and made statements of facts. The government of the Confederate States was modeled after our National Constitution and was organized by men who had borne a conspicuous part in the government of the United States, and the members of its Cabinet were admitted to take part in the business of the Congress and might even be members of it. The experiment is said to have worked well, although the confederate government was so much in the saddle that the project scarcely had a sufficient trial.

If the Cabinet were admitted to the two Houses, its members should be the real executive officers of the country, and not the mere agents of the President. In that respect the system would have some decided advantages. The headship of the state would be put in a position of dignity, which it cannot entirely occupy if it has really to bear all responsibility for the exercise of important political powers. It is impossible to give to our President the immunity from criticism, which ordinarily belongs to a king, and at the same time the real power which is wielded by a prime minister. In a popular government the exercise of power must be subject to the freest criticism, and the greater the power, the greater the freedom of criticism. So long as the President is the real executive of the nation, with a Cabinet whose members are not so much his subordinates as his mere agents, there must be a freedom of criticism greater than is consistent with the dignity of the office. And then again, the duties of the position are altogether too great and numerous to be transacted by a single man. It would be better if the Cabinet were to exercise more real executive power, with the President having powers corresponding to those of the President of the French republic. This is the direction in which the American Constitution would practically grow and develop from the very necessity of the case; either that, or in the direction of autocracy. A Cabinet, strengthened at the expense of the President, would not be so likely to exhibit sensational or "yellow" government. More startling effects can be produced where there is a concentration of authority, more of a Homeric interest secured by

having a single hero win the whole game, than by the most perfect exhibition of team work.

Members of the Cabinet might under the Constitution be admitted to the two Houses to take part in debate, in the making of motions and in the general transaction of business, without the power of voting. Such privileges are now enjoyed by the territorial delegates who have no constitutional status. Such a system would in time be likely to result in the practical control by them of the greater amount of the executive power, and they might gradually acquire an important influence upon the course of business in the two Houses. At least, it would secure a fuller exchange of confidence between the executive and legislative departments; it would tend to bring about a greater unity of action, and when the House refused to sanction any given program of the Cabinet, it would be after the fullest opportunity for explanation. By the difference in our electoral bodies — the House being chosen by constituencies by a popular vote, the Senate by state legislatures, and the President by the electoral college — our system would still retain the checks against hasty or ill-considered action. It undoubtedly would result in an improvement in our Cabinet. In England, a man, in order to become a Cabinet officer, unless he reaches the position by the heredity route through the House of Lords, must have been able to command the support of a considerable portion of the people and have been elected by a constituency to Parliament. It has almost invariably been the case that he has had to maintain himself at many successive elections in order to obtain sufficient prominence to warrant his appointment to the

Cabinet, except in the rare instances where the possession of extraordinary parliamentary talents has been at once displayed, as in the cases of Gladstone and Pitt. But in this country there is now no need of such an apprenticeship in the case of a cabinet officer. Under the proposed system a cabinet officer would at least need to be a man who possessed qualities to fit him for leadership in a representative body, and he naturally would be chosen from among those who had had experience in either the House or the Senate, or who had demonstrated in some other way the possession of the kind of talent demanded.

The members of our Cabinet under the present system, with their much narrower range of power, are quite often taken from among men who have had no experience whatever in the conduct of public affairs, or who have never displayed any aptitude for them, and we have had statesmen styled premiers and placed on a par with members of the governing Cabinets of foreign countries, who had never been even members of the legislatures of their States nor been associated with the government of their country. Such a system tends to the exploitation of political parvenues; and the mere "pusher," the self-exploiter before a coterie of campaign managers, who has put the party treasury under obligations, or who has secured the personal favor of a President, has sometimes found his way into these places. If the Cabinet became a part of the parliamentary body, such appointments as have sometimes been made would be impossible, and we should be more likely to have a Cabinet composed of men who had had parliamentary experience and a connection with national affairs, and who also had talent

for business administration. If the attorney-general, for instance, were compelled to meet the lawyers of the House or the Senate concerning the method in which he administered his office, or as a leader in the legislation connected with it, the time would end when it would be possible to have a second-rate lawyer put at the head of the Department of Justice. There is one obvious objection to the project which I have just been considering. It would not work well where there was a difference in politics between the President and the majority in one or both of the Houses. The President, in case of hostile votes, would have no power to order an election and secure a new Congress, and Congress could not get rid of the Cabinet. The political antagonism would continue until the end of the constitutional term. The difference would be intensified; and the lot of a cabinet officer in a hostile House would certainly not be a happy one.

The Senate has powers of the very first order which have been wielded by many of the greatest statesmen in our history. It is a mighty conservative force in the state. But in any determined struggle with another department, or branch of the government, it would be at a great disadvantage because of its constitution. To give to the eighty thousand people of Nevada the same representation as to the nine millions of New York or to the seven millions of Pennsylvania; to give to one-sixth of the population of the country the power to choose the majority of the body, does such extreme violence to any notion of political equality, as greatly to impair its prestige in a democratic people and in the most democratic era in the history of the world. And

there is a vital defect in its procedure which tends to make it scarcely as representative an institution as the British House of Lords. Violence is done to the foundation principle of our government, by putting it in the power of a single member to bring about a paralysis of all legislative functions and to prevent indefinitely the other ninety-one members, and the House of Representatives as well, from transacting the business of the country. The two legislative organs of a great nation must have a procedure which will permit a majority of either in any crisis to assume the responsibility for performing its great part in the necessary work of government. Unless there shall be a rational reform in the procedure of the Senate, that body is likely to face the curtailment of the powers which it holds in trust for the whole people, but which its present procedure exposes to the grossest abuse.*

The Representatives are the only officers under the national government directly chosen by the voters. Their nearness to the people, the equality of their constituencies, their control of the national purse if they would but assert it, their very numbers, afford the elements to make of them a very great assembly, if not the directing agency of the government. The House has never lacked for men of capacity. It has not always been conspicuous for men of courage. But from various causes, and chiefly from lack of assertion and the willingness of many of its members to become office brokers soliciting favors from the President and at the

* The proceedings of the Senate during the last week of the Sixty-first Congress demonstrate the necessity for a reform of procedure.

senatorial bar, it is to be regretted that it has too often played a secondary part. More than once in our history, however, and notably in the Civil War period, and in the years immediately following, it has shown how naturally it could play a very great part in our government. The House of Representatives is the one organ of government, which by reason of its popular composition, its special powers, and the place assigned it in the Constitution, is fitted to rescue the country from the merciless tyranny of bureaus and of some lawless President with whom Providence may possibly afflict us, to save us from the spectacular rule of some future autocrat, and to keep predominant in our system the sway of representative government, which is so necessary to the preservation of our national safety, strength, and freedom.

NOTE 1 (page 116). — The construction of the navy is treated as a public work which has been undertaken and the addition of one or more battleships is simply in continuation of the work. This seems to be a broad and an exceptional construction. It is held, for instance, that an appropriation for a new lighthouse tender is not in order, nor is an appropriation for a new lighthouse or for a new naval dry-dock or for a new armor-plate factory, even though on land already owned by the government. Many years ago the House established the practice of striking out of an appropriation bill in Committee of the Whole such portions as contained legislation other than appropriations. Although it was held that a battleship may be authorized on a general appropriation bill, it was also held that a proposition to name one was out of order, as the law already confided the power of naming ships to the Secretary of the Navy. The River and Harbor bill is not a general appropriation bill, and therefore the prohibition of the rule is not against it. Legislation which is germane may be proposed on a River and Harbor bill.

The House may impose limitations on a general appropriation bill which provide that no part of the appropriation shall be used for certain specific purposes. Such limitations, however, must be confined to the money covered by the bill and not to moneys to be appropriated by other acts. An amendment that no part of the appropriation for the army shall be available for an army over a certain size was held to be a limitation and in order.

NOTE 2 (page 160). — It was long ago insisted upon that, where one House proposed an amendment to an appropriation bill, which the other House firmly resisted, the House proposing the amendment should yield, on the ground that appropriations "in regard to the propriety or extent of which the two Houses find after deliberation that they still differ, should be separate from those which both consider necessary to the public service." This principle seems to be generally accepted. In 1896, Mr. Cannon declared that the body proposing legislation should recede when the other body will not assent; and Senator Sherman, in a discussion of the same report in the Senate, declared it to be the custom of both Houses, when there was a disagreement threatening to defeat an important appropriation bill, that the House proposing the amendment, which was firmly resisted, ought to recede. In that case, however, the Senate voted to insist on its amendment and the House receded, the House preferring to assent to the appropriations proposed by the Senate rather than to risk the failure of the great Sundry Civil appropriation bill.

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